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A

NEW LAW DICTIONARY,

CONTAINING

EXPLANATIONS OF SUCH TECHNICAL TERMS AND PHRASES AS OCCUR IN THE WORKS OF LEGAL AUTHORS, IN THE PRACTICE OF THE COURTS, AND IN THE PARLIAMENTARY PROCEEDINGS OF THE HOUSES OF LORDS AND COMMONS;

TO WHICH IS ADDED

AN OUTLINE OF AN ACTION AT LAW

AND OF

A SUIT IN EQUITY.

BY

HENRY JAMES HOLTHOUSE, ESQ.

OF THE INNER TEMPLE, SPECIAL PLEADER.

Second Edition, enlarged.

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CHARLES C. LITTLE AND JAMES BROWN.

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PREFACE

TO

THE SECOND EDITION.

THE first edition of this Work has now been out of print about twelve months, and the favour with which the Profession and the Public were pleased to receive it has induced the Author to offer the present improved edition to their notice. With the view of extending its usefulness, the terms and phrases of most frequent occurrence in our Parliamentary proceedings have been introduced. These, indeed, are so intimately connected with the law, and in the present day assume such prominent importance, that, so far from their introduction needing an apology, their omission would furnish fair ground for censure. The following may be instanced as examples of the class of words alluded to: "*Standing Orders*,"—"*Budget*,"—"*Pairing off*,"—*Select Committee*,"—"*Private Bills*," &c. &c.

In addition to this new feature in the Work, several hundred additional words and phrases employed in the

different departments of the law, ecclesiastical, civil, and criminal, and in the practice of the Courts, have been introduced; so that, it is hoped, that the Work, although originally designed for the Student, may, in its present improved form, be found an equally useful auxiliary to the Practitioner, the Magistrate, and indeed to all, who either directly or remotely are engaged or interested in the study or practice of the law.

In conclusion, the Author begs to acknowledge the kind and gentlemanly attention he has received from the several public functionaries with whom he has had occasion to communicate in the course of his labours; and in particular, he is anxious to acknowledge the very able assistance he has derived from the pen of his friend and late pupil Mr. JOHN W. BITTLESTON, of the Middle Temple.

HARCOURT BUILDINGS, TEMPLE,
12*th June*, 1846.

PREFACE

TO

THE FIRST EDITION.

On commencing the study of any art or science, one of the first and most important objects to be attained is an accurate understanding of the technical language peculiar to it. In every art or science there are certain words which, from being employed in an exclusive sense to particularize some visible object, or some abstract idea, have assumed a technical character. The science of the law, if it may be called a science, is extremely prolific in words of this description, and the student, on commencing the pursuit of this branch of knowledge, soon discovers that, in order to understand the law itself, he must first become acquainted with the *language* of the law. To assist him in the attainment of this object, is the purpose of the present work, and it is sincerely hoped that it will answer the end for which it was designed.

Having thus shortly stated the object of the work, it may be as well to explain the grounds on which the author has presumed to offer to the profession a *new* Law Dictionary.

The dictionaries now in use are those of Dr. Cowel, Mr. Blount, and Mr. Whishaw, and a small work entitled *Les Termes de la Ley*. There are also other works of a more comprehensive nature, published under the denomination of dictionaries, but as these partake more of the character of cyclopœdias than of dictionaries, it will be unnecessary further to mention them. The works of Cowel and Blount, although of high authority, are of little use to the student of the present day, owing to the quantity of obsolete matter with which they abound, and the entire absence of many of our modern law terms. The little work entitled *Les Termes de la Ley* contains a very limited number of words, and is not exclusively confined to definitions and explanations; in addition to which, a great portion of it has become obsolete. The work which bears the nearest resemblance to the present is the Law Dictionary of Mr. Whishaw, which although a useful book, and compiled with much care, contains a large number of useless words, which in the present publication have been altogether omitted, and their places supplied by others of more obvious utility. By *useless* words is here meant such as are of no use to the student *in reference to his legal studies*, and which have no connection whatever with the law. The words *harbour*, *hovel*, *harriers*, and *monk's clothes*, may be instanced as examples. Dr. Cowel appears to have been the first among our law lexicographers who sanctioned the admission of such words into a Law Dictionary, and he seems to have been followed in this step by all

his successors. Independently of the number of useless words which incumber Mr. Whishaw's pages, the definitions given in that work are, in the author's opinion, generally too short to convey the full meaning of the words intended to be defined; added to which, the language in which those definitions are framed, is frequently of so quaint and antiquated a character, as, in some cases, to render the definitions themselves almost unintelligible.

If the foregoing remarks are just, it is manifest that there is *room* for a new law dictionary; and it is under this impression that the present work is offered to the profession. It will be seen that in many cases the author's definitions have almost assumed the shape of essays; this it was difficult to avoid, owing to the necessity of introducing preparatory observations, in order to lead the mind progressively to the comprehension of the subject. Thus the words *Use*, *Estate*, *Executed*, and many others, could not possibly be rendered intelligible without the previous introduction of much explanatory matter.

At the end of the dictionary is an appendix, containing an outline of an action at law and of a suit in equity. These were introduced for the purpose not only of *explaining* the words which occur in those proceedings, but also with the view of showing the *relationship* which exists between them. Thus, the word *Plea*, although defined in the dictionary, cannot fully be understood without seeing the relationship that exists be-

tween *it* and the *declaration*, and between the declaration and the previous proceedings in an action; or, in other words, a precise and definite idea of a *part* cannot be obtained without viewing it in connection with the *whole*. These views suggested to the author the above plan, which, it is confidently hoped, will not be found altogether useless.

To conclude in the language of Cowel, "whosoever will charge these my travels with many oversights he shall need no solemn pains to prove them, for I will easily confess them: and upon my view taken of this book since the impression, I dare assure them that shall observe most faults therein, that I, by gleaning after him, will gather as many omitted by him, as he shall show committed by me. No man, no book is void of imperfections; and therefore reprehend who will, in God's name, that is with meekness and without reproach; so shall he reap hearty thanks at my hands."

London,
25th June, 1839.

A NEW

LAW DICTIONARY.

A.

ABACOT. A cap of state, formerly in use amongst our English kings, wrought up into the figure of two crowns.—*Spelman; Chron. Angl.* 1463.

ABACTORS (*abactores*). Those who drove away or stole cattle or beasts in herds, or great numbers at a time, as distinguished from an ordinary thief.—*Du Fresne.*

ABANDONMENT. In the maritime law signifies the exercise of a right which a party, having insured goods, has to give up or abandon them to the insurers (when by some peril of the sea they have become of little value), and to call upon them to pay the full amount of the insurance as if the whole property had been lost. The word *abandonment* seems to *imply* that the whole property insured is *not lost*, but rather that by some of the usual perils of the sea it has become of so little value, as to entitle the insured to call upon the insurers to accept of what is saved, and to pay the full amount of his insurance as if a total loss had really happened.—1 *Park on Ins.* 228, *ed.* 1817.

ABANDUM (*abandonum*). Any thing sequestered, proscribed, or abandoned.—*Cowel.*

ABARNARE (from Sax. *abarian*, to disclose, &c.) To detect, discover, or disclose any secret crime.—*Wilkins' Glossary; Cowel.*

ABATAMENTUM. An entry by interposition.—1 *Inst.* 277. See tit. *Abate.*

ABATE (from the Fr. *abattre*, to beat down). This word has several meanings. In its ordinary sense it signifies to break down or destroy. Thus, to abate a castle or fort, signifies to beat it down or to destroy it. So, to abate a writ, means to defeat or overthrow it, by showing some error or exception therein. This word *abate* is also used in contradistinction to *disseise*. Thus, he who puts a person seised of the freehold out of possession is said to *disseise* such person; the act itself is called a *disseisin*, and he who so commits the act is called a *disseisor*. But he who enters into a house or land void by the death of the last possessor before the heir takes possession, and so keeps him out, is said to *abate*; the act itself is called an *abatement*,

and he who so commits the act is called an *abator*. The word *abatement* may be properly considered under this title, because in all its various applications it still maintains a close connection with the word *abate*, and, in every sense in which it is used, signifies the *act of abating*; that is, of beating down, destroying, defeating, putting an end to, &c. The principal instances in which the word is used are the following:—1. Abatement of freehold; 2. Abatement of nuisance; 3. Abatement amongst legatees; 4. Plea of abatement; 5. Abatement by the death of parties in a suit, &c. It will be seen that in all the above applications of the word, the original meaning is more or less discernible. Thus, *abatement of freehold* is the act of keeping out the heir from his lawful possessions, by entering upon them after the death of the last possessor, and before the heir has taken possession of them. *Abatement of nuisance* means the remedy which the law allows the party injured by a nuisance, of destroying or removing it at pleasure, and by his own act, so long as he does not commit any riot in effecting its removal. *Abatement amongst legatees* means the proportionate reduction or abatement which legatees are subject to have made in the pecuniary legacies bequeathed to them, when the funds out of which such legacies are payable are not sufficient to pay them in full. *Plea of abatement* means such a plea as shows some ground for abating, putting an end to, or quashing the writ in a real or mixed action, or the declaration in a personal action. *Abatement by death of parties* means the ending or abatement of a suit, in consequence of the death of either plaintiff or defendant before judgment.—*Co. Lit.* 134 *b*, 277 *a*; *Les Termes de la Ley*; *Stephen on Pleading*.

ABATEMENT. See tit. *Abate*.

ABATOR. See tit. *Abate*.

ABATUDA. Clipped or diminished.—*Du Cange*.

ABAWED. Terrified, &c.—*Cowel*.

ABBACY (*abbacia* or *abathia*). The jurisdiction of an abbot. It seems to be used in reference to an abbot, in the same sense as the word *bishopric* is in reference to a bishop, i. e. his jurisdiction and privileges.—*34 & 35 Hen.* 8, *c.* 17, 18; *Du Fresne*.

ABBUTTALS. See tit. *Abuttals*.

ABDITORIUM (*abdere*). A place wherein goods, plate, money, or relics were hidden or kept.—*Mon. Ang.* 3, 173; *Du Fresne*.

ABDUCTION. The taking away of any one. Thus, the abduction of a man's wife is the taking her away either by fraud, persuasion, or open violence. So, the taking away a child from its parent, a ward from the guardian, or an heiress from her home, against their will, either by fraud, persuasion, or open violence, are all denominated *abduction*.—1 *Bl.* 443; 4 *Bl.* 208.

ABEARANCE. A word frequently used for behaviour. Thus, a recognizance to be of good *abearance* signifies to be of good behaviour.—4 *Bl.* 251, 256.

ABEREMURDER (*aberemurdrum*). Plain or downright murder, as distinguished from the less heinous crimes of manslaughter and chance-medley. The word is derived from the Saxon *abere*, i. e. apparent, notorious, &c., and *mord*, murder.—*Cowel*.

ABET (*abettare*). To encourage, set on, stir up, or excite; and hence he who commands or instigates an-

other to perpetrate a crime is called an *abettor*, and the act itself is termed an *abetment*.—*Staun. Pl. Cor.*

ABETMENT. See tit. *Abet.*

ABETTOR. See tit. *Abet.*

ABEYANCE or ABBAYANCE (from the Fr. *béer*, or *bayer*, to expect). Expectation, remembrance, waiting, &c. It is a principle of law, that the *absolute* property, or, as it is termed, the *fee-simple* or inheritance of lands and tenements, *is* either vested in some person or other, or that it *will* vest at some future period. When it is not actually vested, but is waiting until the time shall arrive for it to vest in the proper owner, it is said to be in *abeyance*. Thus, supposing A. to grant an estate to B. for life, and afterwards to the heirs of C., in this case the *inheritance* being granted neither to B. nor to C., and not being able to vest in the heirs of C. till his death, on account of the principle of law *nemo est hæres viventis*, must therefore be in waiting, or in *abeyance*, as it is termed, during the life of C.—2 *Bl.* 107; *Co. Lit.* 342.

ABIGEVUS. He who has stolen a large number, or a flock of cattle.—*Bract. lib.* 3, *c.* 6.

ABISHERING. This word is sometimes called *mishersing*, *mishering*, or *miskering*, and signifies the privilege of being free and quit from forfeitures and amerciaments. It is sometimes termed a liberty or freedom, because, when the word is used in a grant or charter, the persons to whom it applies are entitled to the forfeitures and amerciaments of others, but are themselves free from the control of any within their fee.—*Cowel; Les Termes de la Ley.*

ABISHERSING. See tit. *Abishering.*

ABJURATION (*abjuratio*). A renouncing by oath; and is applied in our old law to a sworn banishment or forswearing of the realm.—*Staun. Pl. Cor. lib.* 2, *c.* 40.

ABOLITION. In its legal sense, signifies the leave given by the king or judges to a criminal accuser to desist from further prosecuting a criminal.—*Cowel.*

ABRIDGE (*abbreviare*). This word has nearly the same signification in law as it has in ordinary and popular language, viz. to make shorter. Thus, when it is said that a man *abridges* his plaint in assize, it means that he reduces or *abridges* his complaint in the action of assize. So when a woman is said to *abridge* her demand in an action of dower, it means that she limits or confines her demand within a narrower compass than she had previously done. The word is thus used by Cowel. When any land is put into the plaint or demand which is not in the tenure of the defendant, and the tenant pleads non-tenure, joint-tenancy, or the like, in abatement of the writ, the plaintiff may *abridge* his plaint, that is, *he may leave out that part* and pray that the tenant may answer to the rest.—*Les Termes de la Ley.*—*Cowel.*

ABROACHMENT (*abbrocamentum*). The buying up goods by wholesale before they are exposed to sale in a fair or market, and selling them again by retail.—*Cowel.*

ABROCAMENTUM. See title *Abroachment.*

ABSENTEES, or DES ABSENTEES. A parliament so called, held at Dublin, 10th May, 28 Hen. 8, and mentioned in letters patent, dated 29 Hen. 8.—4 *Inst.* 354.

ABSOLUTE RULE. An order or

mandate granted by a court, commanding something to be done at all events; as distinguished from a *rule nisi*, or, as it is sometimes termed, a *rule to show cause*, which is an order or mandate commanding something to be done *unless cause be shown* to the contrary by the party against whom the rule is obtained. See also tit. *Rule*.

ABSOLUTE WARRANDICE. See tit. *Warrandice*.

ABSOLUTELY DECLARING. Declaring after the defendant is regularly in court, either by having appeared himself to the process issued against him, or by the plaintiff having appeared for him according to the statute. The phrase is used in opposition to that of declaring *conditionally* or *de bene esse*, which means declaring after the return of the process, but *before* the defendant has appeared; that is to say, the plaintiff's declaration in the last-mentioned case is to stand good and be deemed valid upon condition that the defendant subsequently appear to the process issued against him.—1 *Sell. Pr.* 223, 224.

ABSONAIRE. A word used in the oath of fealty among the English Saxons, signifying to shun or avoid. —*Cowel*.

ABSQUE HOC (*withoutthis*). These are formal words made use of in the conclusion of a special traverse, and the traverse itself is thence frequently called a *traverse with an absque hoc*. These words are not essential to a special traverse, others of a *similar import* being sometimes used in their stead; their object is *directly* to deny some proposition or averment set forth in the plaintiff's declaration. For a clearer view of this subject, see tit. *Special Traverse*.

ABSQUE IMPETITIONE VASTI (*without impeachment of waste*). A clause frequently inserted in deeds, signifying that the party to whom the estate is conveyed shall not be sued for committing waste thereon.—2 *Bl.* 283.

ABSTRACT OF TITLE. An historical summary of the right or title to an estate. A person's *title* to an estate is usually evidenced by certain deeds, thence denominated *title deeds*; and an *abstract of title* commonly consists of a short summary of all the most material parts of such deeds, arranged in chronological order, and according to certain prescribed forms. The usual object of an *abstract of title* is to furnish an intended purchaser, or other person, with the means of ascertaining whether the party wishing to dispose of an estate, or to raise a loan thereon, has in fact a good and secure title thereto. This information might, of course, be obtained by a perusal of the deeds themselves; but these, from their important and valuable character, are seldom permitted to be withdrawn from the hands of their owner; and hence an *abstract* of them becomes requisite for the convenience of the intended purchaser or other party desirous of ascertaining the nature and validity of the title.

ABUTTALS (*abutter*). The buttings, boundings or limits of land, east, west, north, or south, showing on what other lands or places they border or abut.—*Cowel*.

ACCAPITARE, ACCAPITUM. A relief. Thus *capitali domino accapitare* is to pay a *relief* to the chief lord.—*Blount; Cowel*.

ACCEDAS AD CURIAM. A writ which lies for a man when he has received a false judgment in a hun-

dred court or court baron. It is in the nature of a writ of false judgment, which lies for him who had received false judgment in the county court. It is said that this writ lies as well for a delay of justice, as for a judgment falsely given.—*F. N. B.* 18; *Reg. Orig.* 56.

ACCEDAS AD VICE COMITEM. A writ directed to the coroner, commanding him to deliver a writ to the sheriff, who, having a *pone* delivered to him, suppresses it.—*Reg. Orig.* 83.

ACCEPTANCE (*Acceptatio*). The accepting or taking anything, which a person is not bound to accept or take, but which, when accepted or taken, becomes binding in its operation and effect. Thus, if a tenant for life grant a lease to a man, and then dies, this lease will, by law, determine, or be at an end by such death; but if the remainder-man accepts rent from the party holding under such lease, such *acceptance* will render the lease made by the tenant for life valid and *binding* against such remainder-man.—*Co. Litt.* 211. *Acceptance*, as applied to a bill of exchange, signifies the act by which the drawee (i. e. the person on whom the bill is drawn) undertakes to pay the bill according to the terms specified in it; and which act usually consists in his writing the word *accepted* across the body of the bill, together with his signature.—*Bayley on Bills.* See tit. *Bill of Exchange.*

ACCEPTING ISSUE. See tit. *Issue.*

ACCEPTING SERVICE OF PROCESS. On commencing legal proceedings against a party, it is generally necessary to deliver (or to *serve*, as it is termed,) the writ or process *personally*, to or upon the defendant; but this, in many instances, may be dispensed with by the defendant's attorney or solicitor undertaking on his client's behalf to *accept* or receive from the opposite party such writ or *process*, which is thence termed *accepting service of process.*

ACCESSARY. A person guilty of a felonious offence, not by being the actor, or actual perpetrator of the crime, nor by being present at its performance, but by being someway concerned therein, either before or after its commission. If *before* its commission, he is termed an *accessary before the fact*; if *after*, an *accessary after the fact.* An accessary *before* the fact is defined to be one who, being absent at the time the crime is committed, yet procures, counsels or commands another to commit a crime; and, in this case, absence is necessary to constitute him an accessary; for if he be present, he is guilty of the crime as principal. Thus, if A. advises B. to kill another, and B. does it in the absence of A., in this case B. is *principal*, and A. is *accessary* in the murder. An *accessary after the fact* is one, who, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon; and generally, any assistance whatever given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes such assister an *accessary*: as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house or other shelter to conceal him, or open force and violence to rescue or protect him.—2 *Hawk. P. C.* 316, 317, 318; 4 *Bl.* 35, 36.

ACCESSARY AFTER THE FACT. See tit. *Accessary.*

ACCESSARY BEFORE THE FACT. See tit. *Accessary.*

ACCESSION (*Property by*). See tit. *Occupancy.*

ACCOLLADE (*Accollen, Collum Amplecti*). A ceremony used in knighthood, by the king's putting his hand about the knight's neck.—*Blount.*

ACCOMMODATION (*Bill of Exchange*). A bill accepted, without any value having been received by the acceptor, for the purpose of raising money thereon by discount. It is called an *accommodation* bill, because it is accepted expressly for the purpose of accommodating the drawer or some other party, and upon the understanding that the acceptor is to be relieved from all liability incurred by having given his acceptance. See tit. *Bill of Exchange.*

ACCOMPT. See tit. *Account, Action of.*

ACCOMPTANT-GENERAL. See tit. *Accountant-General.*

ACCORD. A satisfaction agreed upon between two parties, when one is injured, and which is mutually agreed to be a recompense for the injury.—*Les Termes de la Ley.*

ACCOUNT (*Action of*).—An action which lies against a party to compel him to render an account to another with whom he has had transactions; as against a bailiff of a manor, or a receiver of rents; and the writ by which this action was commenced is thence termed a *writ of account.*—*F. N. B.* 116 to 119; *Co. Lit.* 172 a; *Finch, L.* 302.

ACCOUNT STATED. A balanced account; an account which is no longer open or current, but which has been closed or wound up between the parties. Ex. gr. "When the *account* is once *stated* or balanced, the action must be brought within six years."—*Ch. on Cont.* 807. See *Trueman* v. *Hurst*, 1 *T. R.* 41, 42.

ACCOUNT (*Writ of*). See tit. *Account, Action of.*

ACCOUNTANT-GENERAL. An officer of the Court of Chancery, appointed by 12 Geo. 1, c. 32, to perform all matters relating to the delivery of the suitors' money and effects into the bank, and taking them out again. This officer does not receive any of the money or effects of the suitors of the court, but they are placed in his name in the Bank of England, and he keeps an account with the bank according to the several causes and accounts to which such money and effects severally belong.—*Smith's Ch. Prac.* 12; *Maddox, Ch. Pr.* 777.

ACCREDULITARE. To purge oneself of an offence by oath.—*Blount.*

ACCROCHE (from the Fr. *accrocher*, to hook, clasp, or grapple unto). This word, as used *anno* 25 Edw. 3, stat. 3, c. 8, signifies to encroach; as the *accroaching* to exercise royal power, &c.—4 *Ch. Bl. Com.* 76.

ACEPHALI. The levellers in the reign of Hen. 1, who would acknowledge no superior—*Du Cange; Cowel.*

AC ETIAM BILLÆ. Words which were formerly inserted in bailable writs, but now no longer in use.—3 *Bl. Com.* 288, 471.

ACHAT (Fr. *achet*). A contract or a bargain; whence purveyors in 36 Edw. 3, are termed *achators*, from their frequent bargain-making.—*Cowel; Bount; Brook.* See tit. *Contract.*

ACKNOWLEDGMENT MONEY. A sum of money paid by copyhold te-

nants in some parts of England on the death of their landlords as an *acknowledgment* of their new lords.—*Cowel.*

ACKNOWLEDGMENT OF MARRIED WOMEN. By the 3 & 4 Will. 4, c. 74, it is provided, that a married woman, in every case except that of being tenant in tail, may by deed dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and dispose of, release, surrender, or extinguish any estate therein, and may release or extinguish powers as if she were a feme sole; but to render the same valid, her husband must concur, and the deed must be *acknowledged* by her, that is, it must be acknowledged or admitted by her to be her own act and deed. For the purpose of taking or receiving the admissions or acknowledgments of married women in such cases, certain commissioners are appointed in each county, who are empowered to examine them apart from their husbands touching their knowledge of the contents of deeds and of their voluntary consent to execute them, previously to the same being signed or executed by them; and these commissioners are thence termed "commissioners for taking the acknowledgments of married women." The following memorandum, which is required to be indorsed or written at the foot of in the margin of deeds executed by married women in the above cases, will serve further to illustrate the nature of the acknowledgment. "This deed, marked A., was this day produced before me, and acknowledged by Catherine Nelson therein named to be her act and deed; previous to which acknowledgment the said Catherine Nelson was examined by me separately and apart from her husband touching her knowledge of the contents of the said deed, and her consent thereto, and declared the same to be freely and voluntarily executed by her."—See 3 & 4 *Will.* 4, *c.* 74.

ACQUIETANTIA DE SHIRIS ET HUNDREDIS signifies to be free from suit and service in shires and hundreds.—*Cowel.*

ACQUIETANDIS PLEGIIS. A writ of justicies, which lies for a surety against a creditor who refuses to discharge or *acquit* him after the debt is paid.—*Cowel.*

ACQUIETARE. To acquit, to pay, &c.—*Cowel; Wilkins' Gloss.*

ACQUIT (*ad quietare*). To discharge, to keep in quiet or free from molestation. Hence is derived the word *acquittal*, signifying discharged, freed, delivered; thus, he who is discharged of a felony is said to be *acquitted* of the felony—*acquietatus de felonia.*—*Co. Lit.* 100 a; *Staund. Pl. Cor.* 105.

ACQUITTAL. See tit. *Acquit.*

ACQUITTANCE (*acquietantia*). A release or discharge in writing of a debt or duty which previously was to have been paid or performed. If rent be behind for twenty years, and the lord make an *acquittance* for the last that is due, all the rest are presumed to be paid.—*Co. Lit.* 373 b, [k]; *Spelman, verb. Acquietancia.*

ACRE, or ACRE FIGHT. An ancient duel fought by single combatants, English and Scotch, between the frontiers of their respective kingdoms, with sword and lance. And it is conjectured by some writers that this sort of judicial duelling was also called *campfight*, and the combatants *champions*, from the open *field* which was the place of trial.—*Cowel.*

ACT OF BANKRUPTCY. See tit. *Bankrupt.*

ACT OF GOD. Any inevitable accident or event which takes place without the intervention of man, or which cannot be referred to any specific cause, is said in the language of the law to have happened or taken place by the act of God.—See *per Mansfield, C. J., in Farward* v. *Pittard*, 1 *Term R.* 33.

ACT OF PARLIAMENT. A law passed by all the three branches of the legislature — her majesty, the lords spiritual and temporal and commons in parliament assembled. — *Bell's Sc. Law Dict.*

ACTION (*actio*). An action is defined by some to be "the lawful demand of one's right."—*Mirror, c.* 2, *s.* 1. By others, *jus prosequendi in judicio quod sibi debetur.—Co. Lit.* 285 a. The word, however, as used in the present day, seems rather to signify the *formal means* which the law has prescribed for the recovery of one's rights, and for the redress of civil injuries. Actions are divided into *civil* and *criminal:* the former being such as have relation to *civil* matters, and are litigated between individuals in their individual capacity; the latter being such as have relation to *criminal* matters, and which are of a public nature, affecting the community as a body, and are litigated between the king and the criminal. Hence civil actions are said to relate to *common pleas*, and criminal actions to *pleas of the crown.* Civil actions are divided into *real, personal,* and *mixed.* Real actions are such as are brought for the recovery of *real* property; that is, of lands, tenements, or hereditaments. *Personal* actions are such as are brought for recovery of goods and chattels, or for a debt, or for damages for some injury done to his *person* or property. *Mixed* actions are such as partake of the nature of both the two former kinds, and yet are not reducible to either one exclusively; having for their object the recovery of lands or tenements, and *also* damages for the injury sustained by their being withheld.—*Boote's Suit at Law; Stephen on Pleading,* 3; *Bract. lib.* 3, *fo.* 98; *Fleta, lib.* 1, *c.* 15. The various *kinds* of actions will be found under their appropriate titles. The student who is desirous to understand the nature of the proceedings in an action, and to see the relationship which one part bears to another, is referred to the *outline of an action at law,* at the end of this dictionary.

ACTION PREJUDICIAL (otherwise called *preparatory* or *principal*). Such an action as arises from some doubt in the principal; as when a man sues his younger brother for land descended from his father, and it is objected that he is a bastard; now as this point of bastardy must be tried before the cause can proceed further, it is termed *præjudicialis quia prius judicanda.—Cowel.*

ACTION OF A WRIT. Is a phrase used when one pleads some matter tending to show that the plaintiff had no cause to have the *writ* he brought, although it may be that he may have another writ or action for the same matter. Such a plea is called a *plea to the action of the writ;* but should it appear from the plea that the plaintiff has no cause to have an *action* for the thing demanded, then it is called a *plea to the action.—Les Termes de la Ley; Cowel.*

ACTION OF ABSTRACTED MULTURES. An action to compel persons to grind their corn at a certain mill, according to their tenure. The word *multure* signifies a toll taken by the miller for grinding corn; and hence, if the persons did not grind their corn at the mill they were bound to do, they evaded the toll, that is, *abstracted* it, or took it away, and thus

the miller became an injured party, and for the redress of such injury brought this action.

ACTION FOR POYNDING OF THE GROUND. A species of action in the Scotch law, by which a party, having a real or landed security, may *poynd* (i. e. distrain) all the goods on the lands over which the security extends. This action is in general open to all creditors whose debts constitute a real burden or lien on the land.—*Bell's Scotch Law Dict.*

ACTIONARE. To prosecute one at law.—*Du Cange; Blount.*

ACTON BURNEL. The statute of 13 Edw. 1, anno 1285, ordaining the statute merchant for recovery of debts; it was so called from a place named Acton Burnel, where it was made, being a castle sometime belonging to the family of *Burnel.*—*Cowel.*

ACTOR. This word when used by itself signifies simply an advocate or proctor. *Actor dominicus* seems to have been used to signify the lord's bailiff or attorney; *actor ecclesiæ*, for the advocate or pleading patron of a church; *actor villæ*, for the steward or bailiff of a town, village or manor. —*Spelman; Cowel.*

ACTS OF PARLIAMENT. See tit. *Statute;* also *Act of Parliament.*

ACTUARY (*actuarius*). A clerk or scribe that registers the canons and constitutions of the convocation; also an officer in the court-christian, in the nature of registrar.—*Cowel; Blount.*

AD CREDULITARE. To purge oneself by oath.—*Cowel.*

AD DAMNUM. That part of the declaration which commences with the words "*to the damage,*" &c., is termed *the breach*, and is thence sometimes called the *breach ad damnum.* —1 *Ch. on Pleading*, 362, *6th edit.*

ADDITION (*additio*). The name or title of a man's rank or condition in life; as yeoman, gentleman, esquire, which are termed *additions of estate;* or knight, earl, marquis, &c., which are termed *additions of degree;* or painter, carpenter, &c., which are termed *additions of trade.* The place of abode also of a person is frequently included in the term *addition.* Ex. gr. "He bade me from him call thee Thane of Cawdor; in which *addition* hail most worthy thane."—*Macbeth.*

ADELING, EADLING, or ETHLING (from the Sax. *adel*, or *adelan*, noble, &c.) A title of honour among the Anglo-Saxons properly belonging to the king's children and successors to the crown. Edward the Confessor so named his nephew Edgar, whom, for want of issue, he intended making heir to his kingdom.—*Spelman, verb. Adelingus.*

ADEMPTION OF A LEGACY. The *taking away* of a legacy. This arises from a supposed alteration in the testator's intention. For instance, if a man who has a sum of money due to him on a bond, expressly bequeaths it to some person named in his will, and after having done so calls in the money himself; in such case the party to whom it was bequeathed loses the money as a matter of course. —*Wms. Executors; Toller; Cas. temp. Talb.* 227.

AD INQUIRENDUM. A judicial writ commanding inquiry to be made of anything concerning a cause pending in the king's court for the better

execution of justice.—*Cowel; Reg. Jud.*

ADIRATUS. Strayed, mislaid, or lost for a time.—*Bracton.* But Cowel defines it to be the price or value set upon things stolen or lost, as a recompense to the owner.

ADJOURNMENT (*adjournamentum*). The putting off until some other time or place. Thus the postponement, or putting off of the sitting or proceedings of either house of parliament from one time to another is termed an *adjournment* of the house.

ADJOURNMENT DAYS. The days to which the sittings of the courts are adjourned.

ADJUDICATION (*adjudicatio*). The act of giving or pronouncing judgment.—*Cowel.*

AD JURA REGIS. A writ so called, which lies for him who has been presented to a crown living, against a party who seeks to eject him, to the prejudice of the king's title.—*Reg. of Writs,* 61; *Cowel.*

ADJUSTMENT (*in marine insurance*). When the quantity of damage sustained in the course of a voyage is known, and the amount which each underwriter upon the policy is liable to pay is settled, it is usual for the underwriter to indorse on the policy, *adjusted this loss* at so much per cent., or some words to the same effect, and this is called an *adjustment.*—1 *Park on Ins.* 192, *ed.* 1817.

ADLEGIARE. To purge oneself of a crime by oath.—*Cowel; Du Cange.*

ADMEASUREMENT (*admensuratio*). A writ which lies against those who usurp more than their share. It lies in two cases, 1st, for *admeasurement of dower;* 2nd, *for admeasurement of pasture.* In the first case it is brought by the heir against the widow of a deceased, who holds from such heir or his guardian more land in respect of her dower than she is justly entitled to, in which case the heir shall be restored to the overplus. In the second case it lies between those who have common of pasture appendant to their freeholds, or common by vicinage, when any one or more surcharges the common with more cattle than they ought.—*F. N. B.* 125, 148; *Les Termes de la Ley.*

ADMINICLE (*adminiculum*). As used in the 1 Edw. 4, c. 1, it signifies *aid* or *support:* as used in the Scotch law, it means any deed, or even scroll tending to establish the existence or terms of a lost deed, for the proving the tenor of which an action has been brought.—*Bell's Scotch Law Dict.*

ADMINICULAR. See title *Adminicle.*

ADMINICULATOR (*adminiculando*). An officer in the Roman church who administered to the widows, the fatherless, and the afflicted.—*Spelm.*

ADMINISTRATION. The act of administering, or disposing according to law, of the goods and chattels and personal property in general of a person dying intestate: and the person who so administers or disposes of an intestate's property is thence termed an *administrator;* or if a female, an *administratrix.* An administration *durante minore ætate* is such an administration as is granted to some person during the minority of some other person who would otherwise have administered. So administrations *durante absentiæ* or *pendente lite* are such as are granted to a person when the executor is out of the realm, or when a suit is commenced

in the ecclesiastical court touching the validity of the will. Administration *cum testamento annexo* is an administration which the ordinary grants to some person *with the will annexed*, when the testator makes an incomplete will without naming any executors, or when he names incapable persons, or when the executors named refuse to act. An administration *de bonis non* is an administration granted by the ordinary to some person for the purpose of administering such *of the goods* of the deceased as were *not* administered by the former executor or administrator, and the person to whom in this case the ordinary grants administration is thence termed an *administrator de bonis non.*—*Toller's Ex.*; 2 *Bl.* 502, 503.

ADMINISTRATOR. See tit. *Administration.*

ADMINISTRATRIX. See tit. *Administration.*

ADMIRALTY, COURT OF. A court wherein are tried all matters arising on the high seas, or on those parts of the coasts which are not within the limits of an English county.—4 *Bl. Com.* 268; *Co. Lit.* 260 *a*, *and seq.*

ADMISSION (*admissio*). As used in ecclesiastical matters this word signifies the ordinary's admitting a clerk or parson to the church or benefice to which he is presented by the patron. The word *admission* is also applied to an attorney's being admitted to the privileges of his profession after having conformed to the various regulations and usages required of him for that purpose. As to *Admission to copyholds*, see title *Admittance.*—*Co. Lit.* 344 *a*; 1 *Bl.* 390.

ADMISSION (*of an attorney*). See title *Admission.*

ADMITTANCE. This word, as used in reference to copyholds, signifies the admission of the tenant into the possession of the copyhold estate; the same as *livery of seisin* was the formal mode of delivering the possession of a freehold estate. It is of three kinds—1. *Upon a voluntary grant from the lord*, when the lands have escheated or reverted to him; 2. *Upon surrender by the former tenant*; 3. *Upon a descent from the ancestor.*—2 *Bl. Com.* 369.

ADMITTENDO CLERICO. A writ granted to him who has recovered his right of presentation against the bishop in the common pleas, empowering him to admit his clerk.—*Cowel.*

ADMITTENDO IN SOCIUM. A writ for associating certain persons to justices of assize, who had been previously appointed.—*Cowel.*

ADNICHELLED. Annulled, cancelled, or made void.—28 *Hen.* 8.

AD QUOD DAMNUM. A writ so called, which ought to be issued before the king granted certain liberties; as a fair, market, &c. which might be prejudicial to others. The writ directs the sheriff to inquire *what damage* it might do for the king to grant such fair or market. It was also formerly in use for obtaining a right to turn the course of an old road, or to make a new one.—*F. N. B.* 221, *and seq.*; *Les Termes de la Ley.*

AD TERMINUM QUI PRÆTERIIT. A writ of entry that lay for the lessor and his heirs when a lease has been made of lands or tenements for the term of life or years, and after the term is expired the lands are withheld from the lessor by the tenant or other person possessing the same.—*Cunningham*; *F. N. B.* 201.

ADULTERY or ADVOWTRY (*adulterium*). The sin of incontinence between two married persons. The crime of adultery is sometimes distinguished into *single* and *double* adultery. Single adultery is the crime of illicit intercourse between two persons *one only* of whom is married. Double adultery is the crime of illicit intercourse between two persons *both* of whom are married.—*Cowel*; 4 *Bl.* 64, 65.

AD VALOREM DUTIES. Are duties the amount of which is regulated *according to the value* of the property upon which, or in relation to which, the duties are imposed. They more especially refer to the duties imposed upon conveyances, leases, grants, &c. the stamp upon which is fixed according to the amount of the consideration money paid, or according to the value of the land conveyed or transferred by such instruments.—See 55 *Geo.* 3, *c.* 184; *Chitty, Stamp Laws*, 156, 184, *&c., ed.* 1829.

AD VENTREM INSPICIENDUM. A writ which lies for the heir presumptive to an estate, to examine the widow who says she is with child, and who is suspected to feign being so, with the view of producing a supposititious heir to the estate.—*Cowel*; *Reg. Orig.* 227.

ADVENTURE. See title *Aventure.*

AD VITAM AUT CULPAM. When an office is to determine or be vacated only upon the death or delinquency of the possessor, it is said to be held *ad vitam aut culpam*, or in other words, *quamdiu se bene gesserit.*—*Tomlin.*

ADVOCATE. A person learned in the law, who assists his client with advice, and pleads for him in open court. The barristers in the ecclesiastical courts are so termed; as are also the barristers in Scotland.—*Cowel*; 3 *Bl.* 26.

ADVOCATI. Those persons whom we now call *patrons* of churches, and who reserved to themselves and their heirs a liberty to present on any avoidance.—*Cunningham*; *Spelman, verb. Advocatus.*

ADVOCATIONE DECIMARUM. A writ that lies for the claim of the fourth part or upwards of tithes that belong to any church.—*Les Termes de la Ley.*

ADVOW or AVOW (*advocare*). Signifies to justify an act formerly done. It also signifies to produce or bring forward anything; as when stolen goods were bought by one, and sold to another, it was lawful for the right owner to take them wherever they were found, and he in whose possession they were found was bound *advocare*, i. e. to produce the seller to justify the sale, and so on till they found the thief.—*Cowel*; *Les Termes de la Ley.*

ADVOWEE or AVOWEE (*advocatus*). He who hath a right to present to a benefice. Thus the king is spoken of as *advowee paramount*, he being considered as the highest patron.—*F. N. B.* 39.

ADVOWSON (*advocatio*). The right of presentation to a church or benefice; and he who has the right to present is called a *patron*; they are also sometimes termed *patroni*, sometimes *advocati*, and sometimes *defensores*. Advowsons are of two kinds—*appendant* and in *gross*. An advowson *appendant* means an advowson which is *appended* or annexed to a manor, so that if the manor were granted to any one, the advowson would go with it as a matter of course, and as incident to the estate. An *advowson in gross* signifies an advowson that be-

longs to a *person*, but is not annexed to a manor; so that an advowson *appendant* may be made an advowson in gross by severing it by deed or grant from the manor to which it was appendant. Advowsons are also either *presentative*, *collative* or *donative*. An advowson is termed *presentative*, when the patron has the right of presentation to the bishop or ordinary, and also to require of him to institute his clerk, if he finds him qualified. An advowson is termed *collative* when the bishop and patron happen to be the same person, so that the bishop not being able to present to himself, performs by one act (which is termed *collation*) all that is usually done by the separate acts of presentation and institution. An advowson is termed *donative* when the king or a subject founds a church or chapel, and does by a single *donation* in writing place the clerk into possession, without presentation, institution, or induction.—2 *Bl. Com.* 21; *Cowel*; *Co. Lit.* 17 *b*, *and* 119 *b*.

ADVOWSON OF THE MOIETY OF THE CHURCH (*advocatio medietatis ecclesiæ*), means that the same church has two several patrons, and two several incumbents; the one having the one moiety, and the other having the other moiety. *Medietas advocationis*, i. e. a moiety of the advowson, means when two must join in the presentation and there is but one incumbent; and though they agree to present by turns, yet each of them has but the moiety of the church.—*Co. Lit.* 17 *b*; 7 *Anne*, *c.* 18.

ADVOWSON OF RELIGIOUS HOUSES. The patronage which persons acquired of any house of religion of which they were the founders; the same as those who built and endowed a parish church were by that title made patrons of it.—*Cowel*.

ÆSTIMATIO CAPITIS (*pretium hominis*). It was ordained by king Athelstan, that for offences committed against several persons, fines should be paid according to their rank, by *estimation* of their *heads*.—*Leg. Gen.* 1; *Cowel*.

ÆTATE PROBANDA. A writ that used formerly to be directed to the sheriff of a county, commanding him to summon twelve men as well knights as other honest and lawful men, to be before certain commissioners previously appointed to inquire whether or not the king's tenant, holding in chief by chivalry, was of full age to receive his lands into his own hands. The commission by which the above commissioners were appointed was thence called the *commission pro ætate probanda*.—*F. N. B.* 257.

AFFEERERS (from *affier*, to affirm). Persons who in courts leet and courts baron settle and moderate the fines and amerciaments imposed on those guilty of offences, for which no express penalty has been provided by law.—*Cowel*; 4 *Co. Dig.* 139.

AFFIDARE. To plight one's faith, or swear fealty; whence *affiance*.—*Cowel*.

AFFIDATIO DOMINORUM. An oath taken by the lords in parliament.—*Anno* 3 *Hen.* 6, *Rot. Parl.*; *Blount*.

AFFIDATUS. A tenant by fealty; it also signifies a retainer.—*Blount*.

AFFIDAVIT (*affido*). An oath in writing, sworn before some one who is legally authorized to administer such oath. To make *affidavit* of anything, means to testify to it upon oath in writing.—3 *Bl.* 304.

AFFILED. Filed, or placed on a file.—*Arch. Cr. Law by Jervis*, 563, *ed.* 8*th*.

AFFINITY. The relationship which marriage occasions between the husband and the blood relations of the wife; and between the wife and the blood relations of the husband. Thus there is an *affinity* between the wife and her husband's brother; but there is no affinity between the wife's *sister* and the husband's brother.—1 *Bl.* 434.

AFFIRM (*affirmare*). To ratify or confirm a former law or judgment. The word *affirmance* has much the same meaning. — *Cowel; Crompt. Juris.*

AFFIRMANCE. See title *affirm.*

AFFIRMATION. The testifying to the truth or falseness of anything by the sect called Quakers is called their *affirmation*; because they are permitted to give their evidence without having an oath administered to them, as is the case with other persons; and only simply *affirm* the truth or falseness of any thing.

AFFIRMATIVE STATUTE. A statute framed in affirmative terms directing something to be done, as distinguished from a *negative* statute, which is a statute framed in negative terms *prohibiting* something being done.—*Bac. Abr. tit. Statute G.*

AFFORCIARE. To increase or make stronger.—*Cowel.*

AFFOREST (*afforestare*). To turn ground into a forest.—*Cowel.*

AFFRAY (from the Fr. *effrayer*, to affright). The fighting of two or more persons in some public place to the terror of others; and there must be a stroke given or offered, otherwise it is no affray; and the fighting must also be in public; for, if it be in private, it is no *affray*, but an *assault.*—4 *Bl.* 145.

AFFREIGHTMENT (*affretamentum*). The freight of a ship. See title *Freight.*

AFFREIGHTMENT (*Charter of*). See title *Charter-party.*

AFTER MATH. A second crop of grass.

AGE (Fr. *age*). Signifies in law those periods in the lives of persons of both sexes, which enable them to do certain acts which before they had arrived at those periods they were prohibited from doing. As for example; a male at the age of twelve years may take the oath of allegiance; at fourteen, which is his *age* of discretion, he may consent to marriage, or choose his guardian; and, at twenty-one, he may alien his lands, goods, and chattels. A female at nine years of *age* is dowable; at twelve may consent to marriage; at fourteen is at years of discretion, and may choose a guardian; and at twenty-one may alien her lands, &c. But the full *age* of either male or female is twenty-one, until which they are considered as infants.—1 *Bl.* 463; *Co. Litt.* 78; *Cowel.*

AGE PRIER (*ætatis precatio*). Signifies to *pray age.* Thus when an action is brought against a person under age for lands which he hath by descent, he, by petition or motion, shows the matter to the court, and *prays* that the action may stay till his full *age.*—*Blount.*

AGENFRIDA. The true lord or owner of anything.—*L. Inæ, MS. Ca.* 50; *Spelman.*

AGENT AND PATIENT. The same person who is the doer of a thing, and the party to whom done; as when a woman endows herself of part of her husband's possessions, this being the act of herself to herself

makes her *agent and patient.*—*Co. lib.* 8, 138; *Cowel.*

AGGRAVATION (*matter of*). In the language of pleading, signifies matter which only tends to increase the amount of damages, but which does not concern the right of action itself. Thus in an action of trespass for chasing sheep by which the sheep died, the *dying of the sheep is matter of aggravation* only, and need not have been alleged by the plaintiff in his declaration.—*Step. on Pl.* 270, *ed.* 4*th.*

AGILD. Not subject to penalties, fines, or impositions.—*Spelman.*

AGILER (from the Sax. *A* and *gilt, culpa*). An observer or informer.—*Cowel.*

AGIST (from the Fr. *giste*), signifies to take in and feed the cattle of strangers in the king's forest, and to gather up the money due for the same. It is frequently used in our common law pleadings to signify the taking in and feeding of cattle for a certain remuneration.—*Crompt. Jur.*; 2 *Bl.* 452; *Spelman, verb. Agistare.*

AGISTERS. Persons appointed by the king's letters patent to agist cattle. See tit. *Agist* and *Agistment.*

AGISTMENT. The taking of other men's cattle into any ground for the purpose of feeding them at a certain rate per week. *Agistment* also signifies the profit of such feeding in a ground or field. There is also *agistment* of sea-banks, where lands are charged with a tribute to keep out the sea. *Terræ agistatæ* are lands whose owners are bound to keep up the sea-banks.—*Cowel*; 2 *Bl.* 452.

AGITATIO ANIMALIUM IN FORESTA. The drift of beasts in the forest.—*Cowel.*

AGNATES (*agnati*). Relations through the father, as cognates are relations through the mother. 2 *Bl.* 235; *Bell's Sc. Law Dict.*

AGREEMENT (*agreamentum*). The consent or determination of two or more persons concerning anything done or to be done.—*Plowd.* As to agreements *executed* and *executory*, see title *Executed and Executory.*

AGUAGE (*aguagium*). A watercourse.—*Cowel.*

AID (*auxilium*). A kind of tribute or subsidy formerly granted to the king.—14 *Ed.* 3, *st.* 2, *c.* 1. It also signifies a relief due from tenants to their lords, and which formerly were commonly imposed upon tenants. The objects to which these *aids* were commonly applied were principally three: 1st, to ransom the lord's person when taken prisoner; 2ndly, to make the lord's eldest son a knight; 3rdly, to marry the lord's eldest daughter by giving her a suitable portion. The word *aid* was also used in pleading to signify a petition made in court for the calling in the help of another who has an interest in the cause in question, and who is likely to be able to afford him assistance.—*Les Termes de la Ley*; *F. N. B.* 82; *Cowel.*

AID OF THE KING, *Assistance of the King.* When a tenant of the king has an action brought against him, or has a demand made upon him on account of rent, &c., he may pray *aid of the king*; and, whenever the king is likely to be prejudiced by such action or demand, *aid* will be granted to his tenant.—*Les Termes de la Ley*; *Cowel.*

AID PRAYER. A phrase formerly used in pleading, signifying a petition in court to call in the help of another person who has an interest in the thing contested; as where the

inheritance was in question, the petition would have *prayed the aid of* the reversioner or remainderman.—3 *Bl.* 300; *Cowel.*

AID PRIER. See tit. *Aid Prayer.*

AIDER. This word is commonly used in two senses; 1st, by itself, when it signifies an abettor; 2ndly, in conjunction with the word *verdict*. *Aider by verdict* means curing by verdict. The phrase is used in reference to faults or omissions in pleading. Some faults, errors, or omissions in pleading are aided or cured by the adverse party taking no notice of them, or pleading over, as it is termed, instead of demurring. Others, however, are of so serious a character that even after the party has obtained the *verdict of a jury* in his favour, the court, on being applied to, will stay or arrest their judgment upon the ground that the error is of so important a nature as to vitiate the proceedings. Thus where a plaintiff brought an action on the case *as being entitled to the reversion* of a certain yard and wall, to which the plaintiff alleged in his declaration a certain injury to have been committed, but omitted to allege that the *reversion* was prejudiced, or to show any grievance which in its nature would necessarily prejudice the *reversion*, the court arrested the judgment after a verdict had been given in favour of the plaintiff; for in this case the gist of the action was the injury to the *reversion*, and which the plaintiff in his declaration had in fact not shown to exist. When, however, it may be reasonably presumed, that is, presumed consistently with the general tenor of the pleadings, that the error or defect was supplied or taken into consideration by the jury previously to giving their verdict, in such cases the error, defect, or omission cannot be made a ground of objection, and is thence said to be *cured by the verdict*. The principle of *aider by verdict* is thus stated by Mr. Serjeant Williams: "Where there is any defect, imperfection, or omission in any pleading, whether in substance or form, which would have been a fatal objection upon demurrer, yet if the issue joined be such as necessarily required on the trial proof of the facts so defectively or imperfectly stated or omitted, and without which it is not to be presumed that either the judge would direct the jury to give, or the jury would have given, the verdict, such defect, imperfection or omission, is *cured by the verdict.*"—1 *Saund.* 227, n. (1), *5th ed.*; *Jackson* v. *Pesked*, 1 *M. & S.* 234.

AIEL or BESAIEL (*grandfather* or *great-grandfather*). When a man's grandfather or great-grandfather was seised of lands in fee simple on the day of his death, and a stranger entered on that day and dispossessed the lawful heir of his inheritance, the writ with which he commenced his action against such stranger was termed a *writ of aiel* or *besaiel*, as the case might be.—*F. N. B.* 221, *D.*

ALBINATUS JUS (*alibinus* or *alibinatus*). A law which existed in France, entitling the king, on the death of an alien, to all he was worth, unless such alien enjoyed some peculiar exemption. This law was also called the *droit d'aubaine*, and was abolished by the constituent assembly in 1790 and 1791. See 1 *Chitty's Bl.* 372, 373; *Spelman*, 28, *verb. Albanus, &c., ed.* 1626.

ALDER (*the first*). Thus *alder-best* is the best of all; *alder-biefest*, the most dear.—*Cowel.*

ALDERMAN (Sax. *ealdorman*). A civil magistrate in a city or town corporate, subordinate to the mayor.—1 *Bl.* 116; *Cowel.*

ALE CONNER. An officer appointed in courts leet, whose sworn duty it was to look to the quality of the ale and beer within the precincts of the lordship.—*Kitchen*, 46.

ALER SANS JOUR. *To go without day*; meaning, to be finally dismissed the court, because there is no further day assigned for appearance.—*Cowel.*

ALE SILVER. A rent annually paid to the Lord Mayor of London by those who sell ale within the liberty of the city.—*Cowel.*

ALE TASTER. See tit. *Ale Conner.*

ALFET (Saxon *alfæth*). A cauldron, wherein boiling water used to be put, for a criminal to hold his arm in up to the elbow.—*Cowel.*

ALIA ENORMIA (*other wrongs*). Declarations in the action of trespass, after stating or alleging the specific wrongs or injuries complained of, usually conclude with the general words "and *other wrongs* to the plaintiff then did, &c.;" and this conclusion is frequently called, in the language of pleading, the *allegation of alia enormia*.—1 *Ch. on Pl.* 397; *Lowden* v. *Goodrich*, *Peake*, 46, *per Kenyon.*

ALIAS. This word is usually applied to writs; as an *alias* writ of summons, an *alias* writ of capias, &c., signifying *another* writ of summons, or *another* capias; *alias* writs are commonly resorted to when those which have been issued before them have not taken effect.—3 *Bl.* 283; 1 *Arch. Pr.* 173.

ALIAS DICTUS (*otherwise called*). The style or manner of a defendant's description when sued on a specialty, as on a bond for instance; in which case, after he has been described by his name, and common addition, comes the *alias dictus*, which describes him again in the identical manner that he is described in the bond.—*Dyer*, 50; 1 *Burn's Just.* 138.

ALIBI (*elsewhere*). This word signifies that mode of defence in a criminal prosecution which the accused party resorts to in order to prove that he could not have committed the crime with which he is charged, because he was in a different place at the time.—1 *Burn's Just.* 139.

ALIEN. A person born in a foreign country, out of the allegiance of the king. To *alien* lands, &c. signifies to convey or transfer them, &c. —1 *Bl.* 366.

ALIEN ENEMY. A person born in a foreign hostile country, out of the allegiance of the queen, is so termed, in contradistinction to one born in a foreign country, out of the allegiance of the queen, but on terms of amity with us.

ALIEN, *To.* See tit. *Alien.*

ALIEN AMI. See tit. *Alien Enemy.*

ALIENATION (from *alienare*). The act of transferring the property in lands and tenements, or other things, to another. Alienation in *mortmain*, is the making over of lands or tenements to a religious house, or body politic.—2 *Bl.* 287.

ALIMONY (*alimonia*). That allowance which is made to a woman for her support out of her husband's estate when she is under the necessity of living apart from him. This provision is allowed the wife during the pendency of a suit between her and her husband, as well to provide the wife with the means to obtain justice as for her ordinary subsistence. When there has been a sentence of divorce, on the ground of the adultery or cruelty of the husband, it is

then called *permanent* alimony, and is continued during the period of their separation. Upon an application for alimony, the court requires on the part of the husband a statement both of his casual and certain income to be set forth in a plea called the "*allegation of faculties.*"—1 *Bl.* 440, 441; *Rog. Ecc. Law*, 35, 36; *Cowel.*

ALIUNDE. Elsewhere, besides, from any other quarter, &c. Ex. gr. "You will say whether there is anything in these letters or *aliunde* which satisfies you that they were not written bonâ fide, but maliciously; and in that case you will give such damages as you think right."—*Per Tindal, C. J., in Shipley* v. *Todhunter*, 7 *Car. & P.* 689, 690.

ALLEGATION. In the ecclesiastical courts the first pleading in a testamentary cause is so termed; and the *subsequent* pleas in *all* ecclesiastical causes, whether testamentary or otherwise, are termed allegations, and are then denominated either *responsive* or *rejoining* allegations. A responsive allegation is a plea which the defendant directs against the plaintiff's charge, or complaint, with the view of controverting the same; a rejoining allegation, as the word implies, is the plaintiff's answer or rejoinder to the last-mentioned plea of the defendant.—*Rog. Ecc. Law*, 653, 658.

ALLEGATION OF FACULTIES. See tit. *Alimony.*

ALLEGATION, *Responsive.* See tit. *Allegation.*

ALLEGATION, *Rejoining.* See tit. *Allegation.*

ALLEGIANCE (*allegiantia*). The natural, lawful, and faithful obedience which every subject owes to his prince or liege lord.—1 *Bl.* 366; *Les Termes de la Ley.*

ALLEGIARE. To defend or justify by due course of law.—*Cowel.*

ALLEGING DIMINUTION See tit. *Diminution.*

ALLER. This word, when added to another, conveys to it the superlative degree; as *aller good*, the *greatest* good.—*Cowel.*

ALLER SANS JOUR. See tit. *Aler sans Jour.*

ALLEVIARE. To levy or pay an unaccustomed fine.—*Cowel.*

ALLOCATION (*allocatio*). An allowance made upon account in the exchequer, or more properly, a placing or adding to a thing.—*Cowel.*

ALLOCATIONE FACIENDA. A writ directed to the lord treasurer and barons of the exchequer, for allowing an accountant such sums of money as he has expended in his office.—*Cowel.*

ALLOCATO COMITATU. A new writ of *exigent* allowed before any other county court holden, on the former not being fully served or complied with.—*Fitz. Exig.*

ALLOCATUR (*it is allowed*). After an attorney's bill has been examined or *taxed* by one of the masters, and the items which he disallows have been deducted, the remaining sum, certified by the master to be the proper amount to be allowed, is termed the *allocatur.* See also tit. *Taxing Costs.*

ALLOCATUR EXIGENT. A writ used in the process of outlawry, and directed to the sheriff, commanding him to cause the defendant to be

required at five successive county courts, or in London at five successive hustings, till he be outlawed for non-appearance, or taken if he appear.—*Archbold's Practice.*

ALLODIAL. A free manor; an inheritance that is not held of any superior. *Allodial* lands are such as are free from any rent or service.—2 *Bl.* 47, 60; *Cowel.*

ALLUVION. Land that is gained from the retiring of the sea, and which becomes in time *terra firma.*—2 *Bl. Com.* 261.

ALMARIA, for *Armaria.* The archives of a church or library.—*Cowel.*

ALMONER or ALMNER (*eleemosynarius*). An officer in the king's household, whose duty it is to distribute the king's alms daily.—*Cowel; Les Termes de la Ley.*

ALNEGER. See title *Aulneger.*

ALODIUM or ALLODIUM. A free manor, not subject to any rent or service.—*Cowel;* see also tit. *Allodial.*

ALTARAGE (*altaragium*). This word comprehends not only the offerings made upon the *altar*, but also all the profit which accrues to the priest by reason of the altar. When the altarage, in part or in the whole, was allotted to the vicar or chaplain, it meant only the customary and voluntary offerings at the altar for some divine office or service of the priest, and not any share of the standing tithes, whether predial or mixed. In the case of Franklyn *v.* The Master and Brethren of St. Cross, 1721, it was decreed that where altaragium is mentioned in old endowments, and supported by usage, it will extend to small tithes, but not otherwise.—*Bunb.* 79; 2 *Bulst.* 27; *Spelm. Gloss.* 28; *Cro. Eliz.* 578; *Hetl.* 135, *cited in Rog. Eccl. Law.*

ALTO ET BASSO, means the absolute submission of all differences.—*Du Fresne.*

AMABYR or AMVABYR. A custom in the honor of *Clun*, belonging to the earls of Arundel.—*Cowel.*

AMBACTUS. A servant or client.

AMBIDEXTER. A juror or embraceor who receives money from both parties for giving his verdict.—*Les Termes de la Ley; 5 Edw.* 3, c. 10.

AMENABLE (from Fr. *amener*, to lead, &c.) This word, as used in old law-books, is applied to a woman who is governable by her husband.—*Cowel.*

AMENDMENT. The correction of an error. See also tit. *Avoidance of a Decision.*

AMERCIAMENT (*amerciamentum*). A pecuniary punishment which an offender against the king or a lord in his court is subject to.—*Kitchen*, 214; *Cowel.*

AMI. See tit. *Amy.*

AMICUS CURIÆ (*a friend of the court*). When a judge is doubtful or mistaken in matter of law, a standerby may inform the court thereof as *amicus curiæ.* The counsel in court frequently act in this capacity when they happen to be in possession of a case which the judge has not seen, or does not at the moment remember.—2 *Keb.* 548.

AMITTERE LEGEM TERRÆ or *liberam legem.* To lose the liberty of swearing in any court; or to become infamous, and thus be ineligible as a witness.—*Glan. lib.* 2, *c.* 3.

AMNESTY (*amnestia*). An act of pardon or oblivion.—*Cowel.*

AMORTIZATION (*amortizatio*). An alienation of lands or tenements in mortmain, i. e. to any corporation or fraternity and their successors.—*Cowel.*

AMORTIZE (from the French *amortir*. To alienate lands in *mortmain*.—*Cowel*; see also tit. *Mortmain.*

AMOVE. To take away; to move away; to withdraw. "The king's lands must be *amoved*."—*Rex* v. *Topping*, *M'Cl. & Y.* 561. "All wears in the Thames and Medway shall be *amoved*."—*Com. Dig.* tit. *London*, *B.*

AMOVEAS MANUS, *Writ of*. A writ which lies for a party who has been outlawed, and whose property has been taken by virtue of such outlawry to restore him his property so taken.

AMPLICATION (*amplicatio*). The referring of judgment till the cause is further examined.—*Cowel.*

AMY (*amicus*). A friend. Thus infants are said to sue by *prochein amy*, i. e. by their next friend. *Alien amy* is a foreigner here, subject to some prince in friendship with us.—*Cowel*; *Tomlins.*

AN, JOUR, ET WASTE (*year*, *day*, *and waste*). The forfeiture of lands to the king for the period of a year and a day, which a tenant incurred by committing felony, and afterwards the lands escheated to the lord.—See tit. *Year*, *Day*, *and Waste.*

ANCESTOR (*antecessor*). The distinction made between an *ancestor* and a *predecessor*, in law, is, that the former is applied to an individual in his natural capacity, as J. S. and his *ancestors*, and the latter to a company, body politic, or corporation, as a bishop and his predecessors.—*Cowel*; *Co. Litt.* 78 *b*; *Britton*, 169.

ANCESTREL. Relating to ancestors. Thus homage *ancestrel* is what relates to or hath been done by one's ancestors.—*Cowel.*

ANCHORAGE. The duty to which ships are liable for the use of the haven where they cast anchor.—*Cowel.*

ANCIENT DEMESNE or *Domain* (*vetus patrimonium domini*). A tenure whereby all manors belonging to the crown in the days of Edward the Confessor and William the Conqueror were held. The numbers and names of which manors, as of all others belonging to common persons, William the Conqueror caused to be set down in a book called Domesday; and those which appear by that book to have belonged to the crown, and are there denominated *Terra Regis*, are called *ancient demesne*. Lands in *ancient demesne* are of a mixed nature, i. e. they partake of the properties both of copyhold and freehold; they differ from ordinary copyholds in certain privileges; and from freehold, by one peculiar feature of villenage; viz. that they cannot be conveyed by the usual common law conveyance, but pass by surrender to the lord, or his steward, in the manner of copyholds, with the exception that, in the surrender, the words "to hold at the will of the lord" are not used, but simply the words "to hold according to the custom of the manor." There are three kinds of tenants in ancient demesne; 1st, those whose lands are held freely by grant of the king; 2nd, those who do not hold at the will of the lord, but yet hold of a manor which is ancient demesne, and whose estates pass by surrender, or deed and admittance, and who are styled customary freeholders; 3rd,

those who hold of a manor which is ancient demesne, by copy of court roll, at the will of the lord, and are styled copyholders of base tenure.—*Cowel; Scriven on Copyholds;* 1 *Cruise, Dig.* 44.

ANCIENTY (from the Fr. *ancienté*), signifies eldership or seniority.—*Cowel.*

ANFELDTYHDE or ANFEALTIHLE signifies in the Saxon law a simple accusation.—*Cowel.*

ANGARIA (from the Fr. *angarie*). A personal service, which tenants were obliged to pay to their lords.—*Cowel.*

ANGILD (*angildum*). The bare single valuation or compensation of a criminal; from the Sax. *an*, one, and *gild*, payment, mulct, or fine.—*Cowel.*

ANHLOTE. A single tribute or tax. As the word is used in the laws of William the Conqueror, it signifies that every one should pay according to the custom of the country his part and share, as scot and lot.—*Spelman*, 37, *verb. Anhlot.*

ANIENS (French). Void, of no force, &c.—*F. N. B.* 214.

ANIENT (Fr. *anienté*). Made void. —3 *Inst.* 40.

ANN or ANNAT. Half-a-year's stipend, payable for the vacant half year after the death of a clergyman, and to which his family or nearest of kin are entitled by the law of Scotland.—*Bell's Scotch L. Dict.*

ANNATS (*annates*). This word has the same signification as *first fruits*; it is so called because the rate of the first fruits paid for spiritual livings is after the value of *one year's* profit. —*Co.* 12; *Rep.* 45.

ANNIENTED (from the Fr. *anéantir*). Abrogated, brought to nothing.—*Fleta, lib.* 4.

ANNI NUBILES. The marriageable age of woman; when a woman is said to be *infra annos nubiles*, it means under the age of twelve years, or unmarriageable.—*Co. Litt.* 79 *a*, *s.* 104.

ANNO DOMINI (*in the year of our Lord*). The Romans computed time from the building of Rome; the Grecians by *Olympiads*; and Christians from the birth of Christ; hence *anno domini* 1838, signifies in the eighteen hundred and thirty-eighth year from the birth of Christ.—2 *Inst.* 675.

ANNOISANCE, ANNOYANCE. These words, which are thus written in 22 Hen. 8, c. 5, signify *nuisance.*

ANNUA PENSIONE, *Writ de.* A writ formerly in use, by which the king, who had a yearly pension out of an abbey or a priory, commanded the abbot or prior, &c. to grant the said pension to his chaplain during such time as he was unprovided with a competent ecclesiastical benefice. —*F. N. B.* 231, *G.*

ANNUITY (*annuus redditus*). An annual payment of a certain sum of money chargeable upon the *person* of the grantor.—2 *Bl.* 40.

ANNUITY OF TEINDS (*annuity of tythes*). This was an allowance to the king by the commission of *teinds* or tythes of 6 per cent. from the teind of created benefices; i. e. ten shillings out of the boll of *teind* wheat; eight shillings out of the boll of beer; six shillings out of the boll of rye, oats, and peas. The taking of these tythes or teinds is in Scotland called

the *drawing of teinds*, and was put a stop to in 1674, since which the right has lain dormant.—*Bell's Sc. Law Dict.*

ANSWER. The most usual form of defence made to a plaintiff's bill in chancery; in short, it is simply the defendant's *answer* to the charges which the plaintiff has made against him in his bill.—*Smith's Ch. Prac.; Lubé's Equity Pleading.*

ANNULUM ET BACULUM (*a ring and a staff*). The ancient method of granting the investitures, or bishoprics, was *per annulum et baculum*, i. e. by the prince delivering to the prelate *a ring and a staff* or crosier.—1 *Bl. Com.* 378.

ANTEJURAMENTUM and PRÆJURAMENTUM, called by our ancestors *juramentum calumniæ*. It is an oath which both the accuser and the accused are obliged to make before any trial or purgation, viz. the accuser swore that he would prosecute the criminal, and the accused made oath on the day that he underwent the ordeal, that he was innocent of the fact with which he was charged; if the accuser failed the criminal was discharged; if the accused, he was intended to be guilty, and was not admitted to purge himself by the ordeal.—*Leg. Athel. ap. Lamb.*

ANTIENT DEMESNE. See title *Ancient Demesne.*

ANTISTITIUM. A word used in our old histories, signifying *a monastery.*—*Cowel.*

ANTITHETARIUS. The endeavour to discharge one's self of a fact with which one is accused, by recriminating or charging the accuser with the same fact.—*Cowel.*

APANAGE. See tit. *Appennage.*

APATISATIO. A compact or an agreement made with another.—*Upton, lib.* 2, *c.* 12.

APORIARE. To be reduced to poverty. It sometimes means to shun, or avoid.—*Cowel.*

APOSTARE. To violate; *apostare leges*, wilfully to break or transgress the laws.—*Leg. Edw. Conf.*

APOSTATA CAPIENDO, *Writ de.* A writ formerly in use to compel a person, who, after having become a member of some religious order, had deserted the same, to return thereto to be chastised according to the rules of the said order. It was commonly granted on the fact of such desertion being certified into the Court of Chancery under the seal of the abbot or prior or other head of the religious body to which the deserter belonged. —*F. N. B.* 233 *B.*

APOSTATA CAPIENDO. A writ that formerly lay against one who, having entered and professed some order of religion, transgressed the rules of the same. This writ was directed to the sheriff, for the apprehension of the offender, and delivery of him again to his abbot or prior.—*Reg. Orig.* 71.

APPARATOR or APPARITOR. A messenger who cites offenders to appear in the spiritual court.—*Cowel.*

APPARENT HEIR. He who will succeed to the inheritance provided he outlive his ancestor: as the eldest son or his issue, who by the course of the common law must be heir to his father if he outlive him. He is called *apparent heir*, in contradistinction to *presumptive* heir, the definition of which will be found under the general title *Heir.* In the Scotch law the apparent heir is the person

who has actually succeeded to the inheritance, but who has not as yet made a regular entry into the lands. —*Bell's Sc. Law Dict.*

APPARLEMENT (from the Fr. *pariellement*). Resemblance or likelihood, as *apparlement* of war.—*Cowel.*

APPEAL (from the Fr. *appeller*). This word has two significations; it signifies in one sense a complaint or an appeal to a superior court, when justice is supposed not to have been done by an inferior court. It also signifies, when spoken of with reference to a criminal prosecution, an accusation by one subject against another for some heinous crime, demanding punishment for the injury sustained by himself, rather than for the offence committed against the public. These criminal appeals were however abolished by 59 Geo. 3, c. 46. —3 *Bl.* 55; *Cowel.* The principal kinds of them were the following: 1. Appeal of arson. 2. Appeal of death. 3. Appeal of mayhem. 4. Appeal of rape. 5. Appeal of robbery.—4 *Bl.* 313, 314; 59 *Geo.* 3, *c.* 46.

APPEARANCE. In an action at law there are various formalities which are necessary to be observed, the *reasons* of which are rather obscure to the uninitiated. An *appearance* is one of these formalities. When a defendant is served with a writ of summons, which is a judicial mandate issuing out of and under the authority of the court in which the defendant is sued, he is bound by a command which is contained in this writ to *enter an appearance* thereto within eight days; this *appearance* is a memorandum in writing, according to a prescribed form, signifying that the defendant has *appeared*, according to the command of the writ; this memorandum is delivered to the proper officer of the court, and by him it is *entered* in a book kept for that purpose; and this is what is technically called *entering an appearance.—Arch. Prac.; Tidd.* The word is also applicable to proceedings in other courts besides those of the common law; and it may be observed that it has a very similar meaning as used in the proceedings in a suit in equity. See the outline of a suit in equity at the end of the volume.

APPEARAND HEIR. In the Scotch law signifies he on whom the inheritance has devolved, but who as yet has made no regular entry upon the lands.—*Bell's Sc. Law Dict.*

APPELLANT. The party by whom an *appeal* is made, the opposite party is termed *respondent*. This word was also sometimes used in the same sense as the word *Approver*, which see under the proper title.

APPELLOR, APPELLANT, or APPROVER. See tit. *Approver.*

APPENDANT (*appendens*). Annexed or appended to; as an advowson, a right of common, or a court, may be *appendant* to a manor, i. e. they are a kind of *appendage* to a manor, so that in a grant of the manor they would go with it, as a part and parcel of it.—2 *Bl.* 22; *Co. Lit.* 121.

APPENDITIA. The appendages or pertinences of an estate.—*Cowel.*

APPENNAGE or APENNAGE (*appendendo*). The portion or settlement given to the younger children of princes in France.—*Law Fr. Dict. verb. Apanage.* The origin of this word seems doubtful.—See *Spelman, verb. Appanagium.*

APPOINT, To. The act of appointing. See tit. *Appointment.*

APPOINTEE. He to whom lands, &c. are appointed or directed, by a deed of appointment, to be conveyed. See tit. *Appointment.*

APPOINTMENT. A deed or conveyance so called from its *appointing* or pointing out how property which by another deed has been previously conveyed to trustees, is to be disposed of or settled. It is very common to convey an estate to trustees upon such trusts and for such purposes as the party conveying shall thereafter by a subsequent deed *appoint*, and such subsequent deed is thence termed a *deed of appointment*. The *power* which the conveying party reserves to himself by the first deed, of *appointing* by such subsequent deed how the property is to be disposed of, is technically called a *power of appointment*, and the *act* of exercising this power is termed *appointing*.—See 4 *Cruise*, 428, *ed.* 1824; 2 *Bl.* 376.

APPOINTMENT, *Power of.* See tit. *Appointment.*

APPORTIONMENT (*apportiomentum*). The dividing into part. Thus the apportionment of rent is the dividing it according as the land from which it issues is divided among two or more; as if a man let lands, and afterwards part of them are recovered by a stranger, the lessee shall pay rent, having regard to that recovered and what remains in his hands.—*Les Termes de la Ley; Co. lib.* 8, 79.

APPORTUM (from the Fr. *apport*). The revenue or profit which a thing brings in to the owner. It has also been used for an augmentation given to an abbot out of the profits of a manor for his better support.—*Cowel.*

APPOSAL OF SHERIFFS. The charging them with money received upon their account in the exchequer.—*Cowel.*

APPRAISEMENT, *Commission of.* A commission which used formerly to issue to value treasure trove, wrecks, waifs and estrays which had been taken by the king's officer for the king's use previously to the goods being condemned to the use of the crown.—3 *Bl.* 262.

APPRENDRE. A fee or profit *apprendre* means a fee or profit to be *taken* or *received*.—*Cowel.*

APPRENTICE OF THE LAW. An order of practitioners so termed. The different orders of practitioners in the reign of Edward the First are stated by Fleta to be—*servientes, narratores, attornati et apprenticii.* The apprentices it seems were students, who, it is said, were first permitted by Edward I. to practise in the King's Bench, in order to qualify themselves to become in a course of years *servientes* or serjeants.—2 *Reeves, Eng. Law, c.* 11, *p.* 284.

APPROBATE and REPROBATE. Terms used in the Scotch law when a person takes advantage of one part of a deed, but rejects the rest.—*Scotch Dict.*

APPROPRIARE COMMUNIAM. To enclose or appropriate any parcel of land that was before open common, and thus to discommon it.—*Cowel.*

APPROPRIATE, To. See tit. *Appropriation.*

APPROPRIATION. This word is commonly used in two senses, viz. *appropriation of benefices*, and *appropriation of payments*. An *appropriation of a benefice* is the annexing of a benefice to the use of some religious house, or spiritual corporation, whether sole or aggregate, to enjoy

for ever; the same as an impropriation is the annexing a benefice to the use of a *lay* person or corporation.—1 *Bl.* 385. See also tit. *Impropriation.* The *appropriation of a payment* means the application of a payment to the discharge of a *particular* debt. Thus if a creditor has two *distinct* debts due to him from his debtor, and the latter make a *general* payment on account, without specifying at the time to which account he intends the payment to apply, it is optional in the creditor to *appropriate* (i. e. to apply) the payment to which account he pleases. —*Ch. on Contracts*, 752; *Waller* v. *Lacey*, 1 *Scott's N. R.* 194.

APPROVE (*approbare*). To augment or improve. To approve land, is to make the best use of it by increasing the rent, &c.—2 *Inst.* 472. See tit. *Approvement.*

APPROVEMENT. This word has several meanings: 1. It signifies much the same as *improvement:* thus *approvement* of *common* means the enclosing a part of a common by the lord of the manor for the purpose of cultivating the same, leaving sufficient nevertheless for the commoners. 2. It is also said to signify the profits of a farm.—*Cowel.* 3. It signifies the *act* of an *approver*, who when indicted of treason or felony, and arraigned for the same, confesses the fact before plea pleaded and accuses others, his accomplices, of the same crime in order to obtain his own pardon.—3 *Cruise*, 89; 4 *Bl.* 329; *Cowel;* 2 *T. R.* 391.

APPROVER or PROVER (*approbator*). Is commonly used in two senses: 1. For a person who, when indicted of treason or felony, and arraigned for the same, confesses the fact before plea pleaded, and accuses others, his accomplices in the same crime, in order to obtain his pardon. 4 *Bl.* 330. 2. Bailiffs of lords in their franchises are so termed; and in the stat. 1 Edw. 3, c. 8, sheriffs are called the king's *approvers.*—*Cowel.*

APPRUARE. To take to his own use or profit.—*Cowel.*

APPURTENANCES (*pertinentia*). Those things *appertaining* to another thing as principal; as where a conveyance is made of a house "*with the appurtenances,*" the garden, curtilage, and close adjoining to the house and on which the house is built, will pass with it, as being included in the word *appurtenances.*—2 *Bl.* 17, n. 3.

ARABANT. A term applied to those who held by the tenure of ploughing and tilling the lord's lands within the manor.—*Spelm.*

ARACE (from the Fr. *arracher*). To rase or erase.—*Blount.*

ARAHO. To make oath in a church or some other holy place.—*Cowel.*

ARALIA. Land devoted to the plough, or to agricultural purposes. —*Spelm. Domesd. tit. Essexa.*

ARATRUM TERRÆ. As much land as can be tilled with one plough. *Araturæ terræ* is the service which the tenant is to do for his lord in ploughing his land.—*Cowel.*

ARBITRAMENT (*arbitrium*). The award or decision of arbitrators upon the matter of dispute which has been submitted to them.—3 *Bl.* 16.

ARBITRATION. The submitting of matters in dispute to the judgment of two or more persons called *arbitrators.*—3 *Bl.* 16.

ARBITRATOR. A disinterested person to whose judgment and decision matters in dispute are referred.

ARBITREMENT. See tit. *Arbitrament.*

ARCA CYROGRAPHICA was a common chest with three locks and keys, kept by certain Christians and Jews, wherein the contracts, mortgages, and obligations belonging to the Jews were kept, in order to prevent fraud.—*Cowel.*

ARCHBISHOP (*archiepiscopus*). The head or chief of the clergy in a whole province. He has the inspection of the bishops of that province, as well as of the inferior clergy, and may deprive them on notorious cause. The archbishop has his own *diocese* wherein he exercises *episcopal* jurisdiction; as in his *province* he exercises *archiepiscopal.* To him all appeals are made from inferior jurisdictions within his province; and as an appeal lies from the bishops in person to him in person, so it also lies from the consistory courts of each diocese to his archiepiscopal court.—See 1 *Bl.* 380, 381; 1 *Burn's Ec. Law;* 2 *Roll. Abr.*

ARCHDEACON (*archidiaconus*). A dignitary of the church who has ecclesiastical jurisdiction immediately subordinate to the bishop throughout the whole of his diocese or in some particular part of it. He is nominally appointed by the bishop himself, and has a kind of episcopal authority originally derived from the bishop, but now independent and distinct from his. It is his office to grant letters of administration; he is *oculus episcopi* and *de jure ordinario;* he visits the clergy, and has his separate court for punishment of offenders by spiritual censures, and for hearing all other causes of ecclesiastical cognizance.—*Com. Dig. Ecclesiastical Persons;* 1 *Bl.* 383; *Burn's Ec. Law;* 1 *Lev.* 192.

ARCHERY. It seems from Co. Litt. 107 a, s. 157, that the service sometimes rendered by a tenant by serjeantie consisted in keeping a *bow* for the use of his lord.

ARCHES COURT (*curia de arcubus*). A court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the *dean of the arches,* from the circumstance of his having anciently held his court in the church of Saint Mary *le Bow,* (*Sancta Maria de Arcubus,*) so called from the steeple being raised by pillars built *archwise,* like so many bent bows. The office of the judge of this court is to hear and determine appeals from the sentences of all inferior ecclesiastical courts within the province; this court is now holden at Doctors' Commons.—3 *Bl.* 65.

ARCHIVES (*archiva,* from *arca* a chest). A place where ancient records and writings are kept; it sometimes signifies the records or writings themselves.—*Cowel.*

ARDDELW or ARDHEL. See tit. *Arthel.*

ARENTARE. To let at a certain rent.—*Consuetud. Domus de Farendon. MS. fo.* 53.

ARERIESMENT. Surprise, affrightment.—*Cowel.*

ARGENTUM ALBUM. Silver coin, current money, white rent, &c. See tit. *White Rent.*

ARGENTUM DEI. God's money; money given by way of earnest on the making of any bargain.—*Cowel.*

ARGUMENTATIVE TRAVERSE. A traverse which denies the pleading

or averment to which it is applied in an *argumentative* manner, instead of in a direct and positive form, as required by the rules of pleading. See further tit. *Argumentativeness in Pleading.*

ARGUMENTATIVENESS *in Pleading.* Pleadings are termed *argumentative* when, instead of advancing their positions of fact in a direct and absolute form, they leave them to be collected by inference or argument only, which is in violation of the rule of pleading, that "pleadings must not be argumentative." Thus in an action for ten pieces of money, the defendant pleaded that there was a wager between the plaintiff and one C. concerning the quantity of yards of velvet in a cloak, and that the plaintiff and C. each delivered into the defendant's hand ten pieces of money to be delivered to C. if there were ten yards of velvet in the cloak, and if not to the plaintiff; and proceeded to allege that *upon measuring the cloak it was found there* WERE *ten yards of velvet therein*, whereupon the defendant delivered the pieces of money to C. It was held that this plea was bad for leaving it to be *inferred* that there were ten yards of cloth in the cloak, inasmuch as it was not stated in the plea *positively and without qualification* that there were ten yards, &c., but that upon *measuring the cloak* it was found that there were ten yards," &c., thus leaving it to be *assumed* that the measuring was correct. The plea should have stated positively that there *were* ten yards, &c.— *Ledesham* v. *Lubram, Cro. Eliz.* 870 (6); *Steph. on Pleading*, 412, *4th ed.*

ARIERBAN (from the SAX. *here*, an army, and *ban*, an edict). An edict of the ancient kings, commanding all their tenants to come into the army, and if they refused, then to be deprived of their estates.—*Spelman, verb. Aribannum.*— *Cowel.*

ARLIA CONFIS (*four corners*). A garment worn by Jews when they are about to take an oath. It is worn in the front of their persons, and consists of a piece of square cloth or silk with four twisted strings, and tassels at the end made of lamb's wool from the first born of a ewe, in memory of the children of Israel and the Ten Commandments. It is put on a child when reason is first supposed to take its seat in its mind; and no Jew can consistently with his persuasion take an oath or say his prayers without wearing it.

ARMA MUTARE. An ancient ceremony used to confirm a league or friendship.— *Cowel.*

ARMA REVERSATA. The name of a punishment which a man was subject to when convicted of treason or felony.— *Cowel.*

ARMARIA. See tit. *Almaria.*

ARMIGER. This word has various significations; but in its most ordinary sense it signifies an esquire, and is applied to those who rank between a gentleman and a knight, and who are entitled to bear arms.— *Spelman.*

ARMISCARA. Was an ancient species of punishment imposed on an offender by the judge. At first it was to carry a saddle at his back as a mark of subjection; thus Brumpton tells us, that in the year 1176 the king of the Scots promised Hen. 2 at York, *Lanceam et sellam suam super altare Sancti Petri ad perpetuam hujus subjectionis memoriam offerre.*— *Cowel; Spelman.*

ARMOUR and ARMS. In the meaning of the law are anything that

a man wears for his defence, or takes into his hands, or uses in his wrath to cast at, or to strike another with. So that the appellation *armour* or *arms* do not in the law simply signify a sword, shield, helmet, or such like; but extend also to stones and other missiles used for the purposes of defence or warfare.—*Cromp. Just.* 65; *Cowel.*

ARMS. See tit. *Armour.*

ARNALIA. Lands dedicated to the plough; arable land. Although this word has a place in most of the modern law dictionaries, it seems doubtful whether there is such a word in fact. The authority usually given is Domesday Book, tit. *Essexa*; but the word there made use of is *Aralia.*

AROMATARIUS. A word frequently used for a *grocer*, but is not held good in law proceedings.—1 *Vent.* 142.

ARPEN or ARPENT. An acre or furlong of ground. According to *Domesday Book* it is 100 perches. *Spelman, verb. Arpennis.*

ARPENTATOR. A measurer of lands.—*Cowel.*

ARRAIGN. ARRAIGNMENT (*ad rationem ponere*). To *arraign* a prisoner is to call him to the bar of the court to answer the matter charged against him in an indictment.—4 *Bl.* 322.

ARRAY (from the Fr. *arraye*) signifies the ranking or setting forth in order. Challenges to the *array*, as applied to juries, signifies an exception or objection against all the persons arrayed or impaneled on a jury, on account of partiality or some default of the sheriff or his under-officer who arrayed the panel.—3 *Bl.* 259.

ARRAY, *commission of.* During the reigns of Hen. 2, and Edw. 1, in pursuance of certain statutes then in force, it was usual from time to time for our princes to issue *commissions of array*, and send into every county officers in whom they could confide, to muster and array (or set in military order) the inhabitants of every district, in order to provide against domestic insurrections or foreign invasions.—1 *Bl.* 411.

ARREARAGES or ARREARS (*arreragia*). Money not paid when it is due; as *arrearages* of rent, &c.—*Cowel.*

ARRECTATUS and RECTATUS. An accused person; one suspected of a crime.—*Spelman.*

ARRECTED. Reckoned or considered.—1 *Ins.* 173 *b. and n.*

ARRENATUS. Arraigned, accused.—*Rot. Parl.* 1 *Ed.* 21.

ARRENTATION (from the Span. *arrendar*). The licensing an owner of lands in the forest to inclose them with a low hedge and small ditch, according to the assize of the forest, under a yearly rent. Saving the *arrentations*, is a saving power to give such licenses.—*Ordin. Forestæ*, 34 *Edw.* 1, *cap.* 5.

ARREST (from the Fr. *arrêter*, to stop or stay). The legal seizure, caption, or taking of a man's person.

ARREST OF JUDGMENT. The withholding or staying of judgment, notwithstanding a verdict has been given, on the ground that there is some error appearing on the face of the record, which vitiates the proceedings.—3 *Bl.* 393; *Step. on Pleading*, 106. See example in *Roscorla* v. *Thomas*, 6 *Jur.* 929.

ARREST OF INQUEST. To plead in *arrest* of taking the inquest upon a former issue, is to show cause why an inquest should not be taken, &c. —*Brook.* tit. *Repleader.*

ARRESTANDIS BONIS, NE DISSIPENTUR. A writ which lay for a man whose cattle or goods were taken by another, who was likely, during the controversy, to make away with them, and would hardly have been able to make satisfaction for them afterwards. — *Reg. of Writs,* 126; *Cowel.*

ARRESTANDO IPSUM QUI PECUNIAM RECEPIT. A writ which anciently lay for the apprehension of him who had taken prest-money for the king's wars, and afterwards hid himself, when he should have been ready to go.—*Reg. Orig.* 24; *Cowel.*

ARRESTMENT. The Scotch term for arresting. It is applied either to the *person* or to the *effects.* Arrestment of the person takes place in cases in which there is reason to apprehend that the person will leave the jurisdiction of the judge, and so deprive the creditor of the means of redress. *Arrestment of effects* is that process of the law by which a creditor attaches the debt due to him, or the moveables belonging to his debtor in the hands of a third party. *Bell's Sc. Law Dict.*

ARRESTMENT JURISDICTIONIS FUNDANDÆ CAUSA. (*Arrestment for the purpose of founding jurisdiction.*) This arrestment is resorted to for the purpose of bringing a foreigner within the jurisdiction of the courts of Scotland.—*Bell's Sc. Law Dict.*

ARRESTO FACTO SUPER BONIS MERCATORUM ALIENIGENORUM. A writ that lay for a denizen against the goods of aliens found in this kingdom, as a recompense for goods taken from him in a foreign country after a refusal to restore them.—*Reg. Orig.* 129; *Cowel.*

ARRETTED (*arrectatus*). The convening a man before a judge, and charging him with a crime; it sometimes signifies imputed, or laid unto; as no folly may be arretted to one under age.—*Littleton, cap. Remitter; Cowel.*

ARRHÆ. Earnest, evidence of a completed bargain.—*Tomlins.*

ARRIAGE and CARRIAGE were indefinite services formerly demandable from tenants, but prohibited by 20 Geo. 2, c. 50, § 21, 22.

ARRURA. In the black-book of Hereford, *de operationibus arruræ* means days' works of ploughing; for of old customary tenants were bound to plough certain days for their lord. —*Cowel.*

ARSER IN LE MAIN. Burning in the hand; a punishment formerly inflicted upon certain criminals.

ARSON (*ab ardendo*). The crime of wilfully and maliciously burning the house or outhouse of another man.—4 *Bl.* 220.

ART AND PART. In the law of Scotland signifies the contriving, aiding or abetting in the perpetration of a crime; and when it is said of a person charged with a crime, that he was *art and part* in committing the same, it means that he was both a contriver of and actor *in* it.—*Bell's Sc. Law Dict.*—*Cowel.*

ARTHEL. To avouch. This word is sometimes written *arddelw,* and by the south Welsh *ardhel,* and is thus used: if a man be taken with stolen goods, he must be allowed a lawful

arddelw (or vouchee) to clear him of the felony.—*Blount; Cowel.*

ARTICLES (*articulus*). As used in the ecclesiastical courts signifies a complaint exhibited in a criminal cause against a party. In form it runs in the name of the judge, who articles and objects the facts charged against the defendant. The word also signifies conditions, stipulations, rules, &c. Thus *articles of war* are a code of laws or rules for the regulation of the army: *articles of the navy*, a similar code of laws for the regulation of the navy: *articles of religion*, rules or propositions declaratory of the faith and doctrines of a particular religion.—1 *Bl.* 415 *to* 420; *Reg. Ecc. Law*, 653; *Cowel.*

ARTICULI CLERI (*articles of the clergy*). Statutes containing certain articles or rules relating to the church and clergy, and ecclesiastical matters. —*Cowel.*

AS OF. These words are frequently used in the law in a technical sense. Thus, signing judgment *as of* Trinity term, implies that the judgment was not signed *in* Trinity term in point of fact, but for all practical purposes is to be *considered* as so signed; that is to say, as having reference to that term; and the judgment itself would, upon the face of it, purport to have been signed in that term. "In trespass for taking away 200 loads of wood, if the defendant pleads that S. S. was possessed of them *as of* his own goods (*ut de bonis propriis*)," &c. &c.; in the above passage the phrase would seem to be elliptical; and if expressed at length, would be "possessed of them in like manner, or in the same way, *as one would be possessed of* one's own goods." The above phrase, therefore, is intended to point out or describe the *nature* or *kind* of possession which S. S. had in the goods, viz. an absolute possession, a possession not as trustee or agent for another, but a possession arising out of his *own* individual right to the goods.

ASPORTATION. The carrying away of goods.—4 *Bl.* 231.

ASSACH or ASSATH. A kind of purgation formerly used in Wales, by which the accused party cleared himself by the oaths of 300 men.—*Termes de la Ley.*

ASSART (from the Fr. *assartir*, to make plain). An offence committed in the forest by pulling up the trees and thickets by the roots, and so making the forest plain like arable land.—*Les Termes de la Ley.*

ASSARTMENTS. See tit. *Assart Rents.*

ASSART RENTS. Rents paid to the crown for forest lands assarted.—22 *Geo.* 2, *c.* 6.—*Cowel.*

ASSAULT AND BATTERY. An assault is an *attempt* or *offer* with force and violence to do a corporal hurt to another, as by striking *at* him with or without a weapon. An injury *actually done* to the person of a man in an angry, revengeful, or insolent manner, be it ever so small, as by spitting in his face, or any way touching him in anger, is a *battery* in the eye of the law; thus, every *battery* includes an *assault*; but every *assault* does not include a *battery*.—*Cowel*; 3 *Bl.* 120; *Com. Dig. Battery, A.*

ASSAY of weights and measures, (from the Fr. *essay*, a proof or trial), is the examination of weights and measures by the constituted authorities.—*Reg. Orig.* 279.

ASSAYER OF THE KING (*assayator regis*). In the present day, sometimes termed *assay master*, is an officer in the king's mint, for the trial of silver and bullion.—*Cowel.*

ASSAYSIARE. To take as fellow-judges; a term used in old charters. —*Cowel.*

ASSECURARE (*adsecurare*). To secure by pledges or any solemn interposition of faith.—*Cowel.*

ASSEDATION. Possession by a tack or lease, &c. — *Scotch Dict.; Tomlins.*

ASSEMBLY, UNLAWFUL, is defined to be the meeting of three or more persons with the intention of doing an unlawful act.—4 *Bl.* 146. See also tit. *Riot.*

ASSESS. To charge with any certain or fixed sum.

ASSESSMENT. Any certain or fixed sum imposed or charged upon persons or property.

ASSESSORS. Persons who assess the public taxes, by rating every person according to his estate. In the Scotch law the term is also applied to persons, who, possessing a knowledge of the law, are appointed to advise and direct the decisions of the judges in certain inferior courts. —*Bell's Sc. Law Dict.*

ASSETS (from the French *asset*, enough). Personal property of a saleable nature in the hands of the executor or administrator, sufficient or *enough* to make him chargeable to a creditor or legatee, so far as that personal property will extend. *Assets by descent or real*, are lands which are in the hands of the heir, charged with the payment of debts contracted by the ancestor, so far as such lands can go in the discharge of those debts; thus, when a man has bound himself and his heirs in any obligation in writing with the payment of a certain sum, and he dies seised of lands in fee-simple, which descend to his heir, these lands, when in the hands of the heir, will be liable to the payment of that sum.—2 *Bl.* 510; *Toller's Ex.*

ASSIDERE or ASSEDARE, signifies to tax equally. Sometimes it signifies to assign an annual rent to be paid out of a particular farm.—*Cowel.*

ASSIGN (*assignare*). When used as a verb this word has two significations: one *general*, as to make or assign over something to another; the other *special*, as to set forth or point out, as to assign error, to assign false judgment, &c. Our judges are also said to be *assigned* to take the assizes, i. e. *appointed* to take them. The word is also frequently used as a noun, synonymously with *assignee*, meaning any one to whom property is *assigned.*

ASSIGNS. See tit. *Assign.*

ASSIGNATION. This word has a variety of significations in the Scotch law. In general it is used to denote a conveyance, disposition, or assignment.—*Bell's. Sc. Law Dict.*

ASSIGNEE (*assignatus*). This word, in its general signification, means a person who is appointed or deputed by another to do any act, or to transact any business. When any right, title, or property is assigned or made over to another, the party who assigns or makes it over is termed the *assignor*, and he to whom it is assigned is termed the *assignee*; and this is the meaning which the word *assigns* has in deeds and instruments; for instance, when A. in a deed covenants for himself, his executors,

administrators, and *assigns*, this word *assigns* means any person to whom the property or interest contained in the deed may happen at any future time to be assigned. *Assignee* or *assignees* also signify those persons in whom the personal estate and effects of a bankrupt become vested by virtue of their appointment, and who are thence termed *assignees of a bankrupt*. As to the several kinds of assignees of a bankrupt, see tit. *Assignees of Bankrupt*.

ASSIGNEES OF BANKRUPT. Persons in whom the estate and effects of a bankrupt become vested as trustees for the general creditors of such bankrupt. Assignees of a bankrupt are of two kinds, viz. *official* and *creditors'* assignees. *Official assignees* are persons holding permanent appointments under government as such, and who exercise no other calling or profession. *Creditors' assignees* are persons (usually themselves creditors of the bankrupt) selected by the creditors of the bankrupt to be trustees of the estate and effects of the bankrupt for the benefit of the creditors generally. Formerly, the assignees had no title whatever to the bankrupt's property, real or personal, until an *assignment* of the same had been actually executed: but by the 1 & 2 Will. 4, c. 56, s. 25, all the personal estate and effects of the bankrupt become vested in the assignees "by virtue of their appointment, without any deed of assignment for that purpose, as fully to all intents as if such estate and effects were assigned by deed to such assignees and the survivor of them;" and by section 26, so much of the real estate of the bankrupt as by the 6 Geo. 4, c. 16, is directed to be conveyed by the commissioners to the assignees, shall vest in the assignees without any deed of conveyance for that purpose.—See 1 & 2 *Will.* 4, *c.* 56; *Arch. Bank.* 194, 212, 10*th edit.*

ASSIGNMENT (*assignatio*). The making or transferring anything over to another; also the name of the deed or instrument by which such transfer is effected.

ASSIGNOR. See tit. *Assignee*.

ASSIMULARE. To put together. *Cowel.*

ASSISA CADERE. When there is some defect or insufficiency in a suit which prevents the complainant from proceeding further in it. To be non-suited.—*Cowel.*

ASSISA CONTINUANDA. A writ directed to the justices of assize for the continuation of a cause, when certain records alleged could not be produced in time by the party who had occasion for them.—*Reg. Orig.; Cowel.*

ASSISA PANIS ET CERVISIÆ. The power of assizing or adjusting the weight and measures of bread and beer.—*Cowel.* The old stat. 51 Hen. 3, for setting the price of bread and ale, is so called.—*Tomlins.*

ASSISA PROROGANDA. An obsolete writ, directed to the justices assigned to take the *assizes*, for the stay of proceedings on account of the party's being employed in the king's business.—*Reg. Orig.* 208; *Cowel.*

ASSISE (Fr. *assis*). This word is derived from *assideo*, to sit together; and is usually taken for the court, place, or time where the judges of the three superior courts at Westminster try all questions of fact issuing out of those courts that are ready for trial by jury.—3 *Bl.* 59. These assises are indeed neither more nor less than the sittings of the judges at the various places where they visit on their *circuits*, and which they usually make twice in every year in

the respective vacations after Hilary and Trinity terms, the former of which is commonly called the *spring assizes*, the latter the *summer assizes*. The term *assise* is also used for a jury, and for a writ for recovery of possession of lands of which the party has been disseised or put out of possession.—3 *Bl.* 58, 60. The various kinds of *writs of assise* will be found under their appropriate titles.

ASSISE OF DARREIN PRESENTMENT (*assisa ultima præsentationis*). This was a writ which lay when a man or his ancestor had presented a clerk to a church, and after the church had become void by his death or otherwise, a stranger presented his clerk to the same in disturbance of the patron.—*Reg. Orig.*; *F. N. B.* 31, *F.*

ASSISE OF THE FOREST (*assisa de foresta*). A statute or condition concerning orders to be observed in the king's forests.—*Manwood*; *Cowel.*

ASSISE OF MORT D'ANCESTOR (*assisa mortis antecessoris*). A writ that lay when a man's father, sister, mother, brother, &c. died seised of lands, tenements, rents, &c. that were held in fee, and after their death a stranger abated.—*Reg. Orig.* 223; *Tomlins*; *F. N. B.* 195, *C.*

ASSISE OF NOVEL DISSEISIN. A remedy for the recovery of lands or tenements of which the party has been disseised or put out of possession.—3 *Bl.* 186; *F. N. B.* 177, *A.*

ASSISE OF NUISANCE. A writ which lies against a man to redress or remove a *nuisance* which he has created to the freehold of another, which he has for life, in tail, or in fee simple.—*F. N. B.* 183, *I.*

ASSISE DE UTRUM, or ASSISA JURUM UTRUM. A writ which lay for a parson against a layman, or a layman against a parson, for lands or tenements, when it was doubtful whether they were lay-fees or free-alms.—*Cowel.*

ASSISERS. The persons who made up or formed that kind of court, which in Scotland was called an assise, for the purpose of judging and inquiring into divers civil causes, such as perambulations, cognitions, molestations, purprestures, and other matters. They seem, in fact, to have performed a similar office to our jurors in England.—*Skene de Sig. Verb.* tit. *Assisa*; *Spelman, verb. Assisa.*

ASSISUS. Farmed or rented out for such an *assise*, or certain assessed rent in money or provisions.—*Cowel.*

ASSITHMENT. A weregeld or compensation by a pecuniary mulct.—*Cowel.*

ASSOCIATION (*associatio*). A writ or patent sent by the king, either at his own suggestion, or at the suggestion of some other party, to the justices of assise, &c., to have others associated with them, when, from some cause or other, additional assistance is required; as in the case of the death or illness of a judge, or from an unusual amount of business, &c.—*F. N. B.* 185.

ASSOILE (*absolvere*). To deliver or set free from excommunication.—*Cowel.*

ASSUME, To. To promise, or undertake. Ex. gr.: "The defendant *assumed* to pay to the plaintiff twenty shillings."—*Allen* v. *Harris*, 1 *Ld. Raym.* 122; see also *Hunt* v. *Bate*, *Dyer's Rep.* 272, (31). Hence the word *assumpsit*, as applied to that form of action provided for the recovery

of damages resulting from a breach of a *promise* or *undertaking*.

ASSUMPSIT (*assumo*). This word is ordinarily used in two senses; 1st, to signify a *promise* or undertaking; 2ndly, an *action* to recover damages for the breach of a promise or undertaking. In this latter sense it may be defined to be an action for the recovery of damages for the non-performance of a parol or simple contract, i. e. a promise not under seal. The action is so called from the word *assumpsit*, which, when law pleadings were framed in Latin, was always inserted in the declaration as descriptive of the defendant's *undertaking*. It is not necessary to sustain this action that there should have been a breach of an actual or express promise, inasmuch as the law always *implies* a promise to do that which a party is legally bound to perform, and the breach or violation of such *implied* promise is sufficient to support the action.—1 *Ch. on Pleading*, 98; *Step. on Pleading*, 19; 3 *Bl.* 158.

ASSURANCE. This word, as applied to lands, signifies a deed of conveyance. All deeds that are used for the purpose of conveying property from one party to another are termed *assurances*, because they are the means of *assuring* or making *sure* the property so conveyed. For the other signification of this word, see tit. *Insurance*.

ASSYSERS. See tit. *Assisers*.

ASSYTHMENT. In the law of Scotland is an indemnification due to the heirs of a person who has been murdered from the person guilty of the crime.—*Bell's Sc. Law Dict.*

ASTER and HOMO ASTER. A man who is resident.—*Britton*, 151.

ASTRARIUS HÆRES (from *astre*, hearth, home, &c.) Is applied by some of our old law writers for an heir apparent, who with his family has been placed by his ancestor in a house, and provided with a livelihood during the lifetime of such ancestor. —*Bract. lib.* 2, *fo.* 85; *Co. Litt.* 8 *b*, *sect.* 1.

ATHE (*adda*). The privilege of administering an oath in some cases of right and property; from the Saxon *ath* (*juramentum*).—*Cowel.*

ATIA. See tit. *Odio et Atia*.

ATTACH (*attacher*). To attach means to take, or apprehend by command of a judicial writ termed an *attachment*. It is a mode of punishment usually resorted to in cases of contempt of court; as when a man openly insults or resists the process of the courts, or the judges who preside there; or when a man *does* any act, or *omits* to do any act, which shows his disregard of the authority of the courts.—4 *Bl.* 283.

ATTACHIAMENTA BONORUM. A distress levied upon the goods or chattels of any one sued for a personal debt by the legal attachiatores or bailiffs as a security to answer the action. The abbot and convent of Oseney had the privilege granted to them of having the attachments of their tenants' goods quit-claimed or released.—*Paroch. Ant.* 196.—*Cowel.*

ATTACHIAMENTA DE SPINIS ET BOSCO.—The privilege granted to the officers of the forest to take thorns, brush, and windfall within the precincts or liberties committed to their charge.—*Paroch. Antiq.* 209; *Cowel.*

ATTACHMENT (*attachiamentum*). A taking, apprehending, or seizing by command of a judicial writ termed

a *writ of attachment*. The process of attachment is frequently resorted to in the Court of Chancery, to enforce the appearance of a party who has been served with a subpœna, and taken no notice of it. For the particular *kinds* of attachments, see their appropriate titles.

ATTACHMENT, FOREIGN. Is a peculiar and ancient remedy open to creditors within the jurisdiction of the city of London, Exeter, and some other ancient cities, by which they are enabled to satisfy their own debts by *attaching* or seizing the money or goods of their debtor, in the hands of a stranger or third party within the jurisdiction of such city. Thus supposing A. to owe B. ten pounds, and C. to owe another sum of money, B. may, by this process, take or attach the goods of A. in the hands of C. to satisfy himself. See *Pulling's Laws and Customs of the City and Port of London*, 187; 1 *Camp.* 282; *M'Grath* v. *Hardy*, 4 *Bing. N. C.* 785, where a very luminous statement of the proceedings in foreign attachment will be found.

ATTACHMENT OF THE FOREST (*attachiamentum forestæ*). The lowest of the three forest courts was so named. It is said to have been so called because the verderors of the forest had therein no other authority than that of *receiving the attachments* of offenders against vert and venison taken by the rest of the officers, and of inrolling them, that they might be presented and punished at the next justice seat.—*Manwood*, 93; *Cromp. Juris.*

ATTACHMENT OF PRIVILEGE. (*attachiamenta de privilegio*). That kind of attachment which a man is entitled to by virtue of a privilege, to call another to the court of which he is an officer, or to which he belongs, to answer or defend an action. —*New Book of Entries, verbo Attachiamentum.*

ATTAINDER (*attinctura*). The taint, stain, or corruption of blood, which the law attaches to a criminal who is capitally condemned. He is then called attaint, (*attinctus*) stained, or blackened, and is no longer of any credit or reputation, and is considered already dead in law, and incapable of performing the functions of another man.—4 *Bl.* 380. The effect of an *attainder* is a forfeiture of the party's honours and dignities; he becomes degraded in the eye of the law, so that his children cannot be heirs to him nor to any other ancestor, and these consequences can only be removed by authority of parliament.—*Co. Litt.* 391 *b*, *sect.* 745.

ATTAINT (*attincta*). A writ which formerly lay against a jury who had given a false verdict in any court of record to the amount of forty shillings debt or damages, or more, in order that the judgment which followed upon such verdict might be reversed. It was so called, because the party who obtained it endeavoured to touch or *stain* the jury with perjury.—*Co. Litt.* 294 *b*, *sec.* 514; 3 *Bl.* 402; *F. N. B.* 105, *G.*

ATTAINTED (*attinctus*). A corruption of blood, which the law attaches to a person who has been convicted of high treason. See title *Attainder*. The word is also sometimes used generally for a person found guilty of a crime or offence; thus in stat. West. 1, c. 24 and 36, anno 3 Edw. 1, a man is said to be *attainted* of disseisin.

ATTENDANT (*attendens*). This word is commonly used in two senses; 1st, as applied to an individual; 2nd, as applied to a term of years. In the former sense it signifies one who owes a duty or service to another, or

in some way depends on him, as where a wife is endowed of lands by a guardian, she is said to be *attendant* on the guardian, and on the heir when he comes of age. For the meaning of the word attendant as used in reference to a term of years, the reader is referred to title *Term.*

ATTENDANT TERMS. See title *Term.*

ATTENDING THE INHERITANCE. See tit. *Term.*

ATTENTATS (*Fr.*), *Attempts.* When acts are done in supposed prejudice of an appeal, they are called in the language of the civil and canon law, "*attentats,*" the general definition of which word seems to be "anything whatsoever wrongfully done or attempted in the suit by the judge *à quo,* pending an appeal."—1 *Add.* 21, *in nota; Conset. pt. 5, c. 1, s. 3, p.* 208; *Rog. Ecc. Law, 54.*

ATTERMINING (from the Fr. *atterminer*). The purchasing or gaining longer time for payment of a debt.—*Cowel.*

ATTEST, To. See tit. *Attestation.*

ATTESTATION. The attestation of a deed signifies the testifying or witnessing the signing and sealing of it. The formal clause "signed, sealed, and delivered, &c." together with the witness's name, is also sometimes called the attestation.

ATTESTING WITNESS. He who attests or witnesses the execution of a deed or other instrument.—See tit. *Attestation.*

ATTORN (*attornare*). To acknowledge, to turn from one to another. Thus a tenant is said to *attorn* when he acknowledges a new landlord, by paying him rent, or some other act of acknowledgment. See also tit. *Attornment.*

ATTORNARE REM. To *attorn* or turn over money and goods, i. e. to assign or appropriate them to some particular use.—*Cowel.*

ATTORNATO FACIENDO VEL RECIPIENDO. An ancient writ, commanding a sheriff or steward of a county court, or hundred court, to receive an attorney for the person so taking out the writ, and to admit his appearance by him.—*Cowel.*

ATTORNEY (*atturnatus*). One who is put in the place or stead of another to act for him. There are two kinds of attorneys, one who acts in a private capacity and is simply called an attorney while his authority to act for such other party is in existence; the other who acts in a public capacity as an officer of her majesty's courts at Westminster, and is called an *attorney-at-law,* and whose duty consists in transacting and superintending the legal business of his clients, as in prosecuting and defending actions at law, in furnishing his clients with legal advice, and in performing various other important matters connected with the practice of the law.—*Spelman, verb. Atturnatus;* 3 *Bl.* 25.

ATTORNEY AT LAW. See title *Attorney.*

ATTORNEY AND CLIENT. See tit. *Costs.*

ATTORNEY-GENERAL (*atturnatus generalis*). A high law officer of the state, who receives his appointment by letters patent, and is selected from her majesty's counsel learned in the law; his office is to prosecute criminal matters for the crown, exhibit informations, and transact general business, for which he receives a standing salary.—3 *Bl.* 27.

ATTORNEY OF THE DUCHY COURT OF LANCASTER. The second officer in that court, who seems from his skill in law to be placed there as assessor to the chancellor of that court, being generally some honourable person, who is chosen rather for his probity than his learning, to deal between the king and his tenants.—*Cowel.*

ATTORNMENT (*attornamentum*). A tenant's acknowledgment of a new lord on the alienation of lands by the former lord. It is of feudal origin, for by the feudal law the feudatory could not alien or dispose of the feud without the consent of the lord, nor the lord alien or transfer his seignory without the consent of his feudatory. —2 *Bl.* 288, 290; *Bract.* 41; *Spelman, verb. Atturnamentum.*

AUDIENCE COURT (*curia audientiæ Cantuariensis*). A court belonging to the Archbishop of Canterbury, having the same authority with the Court of Arches, but inferior to it in dignity and antiquity.—*Les Termes de la Ley; 4 Inst.* 337.

AUDIENDO ET TERMINANDO. A commission directed to certain persons to appease and punish the offenders in any riotous assembly or insurrection. It is also called the commission of *oyer and terminer*, i. e. a commission to hear and determine the offences committed by the members of such riotous assembly or insurrection.—*F. N. B.* 110, *B.*; *Cowel.*

AUDITA QUERELA. A writ which lies for a defendant, against whom judgment has been recovered, and who is therefore in danger of having execution issued against him, to relieve or discharge him upon showing some good ground for discharge which has arisen since the recovery of such judgment. This remedy is rarely resorted to in the present day.—*F. N. B.* 102, *H.*; 3 *Bl.* 405; *Cowel.*

AUDITOR (*Lat.*) According to our law is an officer of the king or some other great person, who, by yearly examining the accounts of all under officers accountable, makes up a general book that shows the difference between their receipts and payments, and their allowances, commonly termed allocations; as the *auditors* of the exchequer take the accounts of those receivers who collect the revenues, and set them down and arrange them.—*Cowel.*

AUDITOR OF THE RECEIPTS. An officer of the exchequer who files the tellers' bills, makes an entry of them, and gives the lord treasurer a certificate of the money received the week before.—*Cowel.*

AUDITORS OF THE IMPREST. Officers of the exchequer who audit or make up the great accounts of Ireland, Berwick, the Mint, and of any money *imprested* to any man for the king's service.—*Cowel.*

AUGMENTATION (*augmentatio*). The name of a court erected 27 Hen. 8, for the purpose that the king might be justly dealt with concerning the profits of such religious houses and their lands as were given to him by act of parliament the same year. The court was so called because the revenues of the crown were so much *augmented* by the suppression of the said religious houses as the king reserved to the crown.—*Les Termes de la Ley.*

AULA. A court baron; it signifies generally a hall, or court, and sometimes a mansion house; *aula ecclesiæ* is that which is now termed *navis ecclesiæ*, or the nave or body of

the church. *Aula regis* was a court which William the Conqueror established in his own *hall*, consisting of the great officers of state who resided in his palace.—*Cowel*; 3 *Bl.* 37; *Spelman.*

AULA ECCLESIÆ. See tit. *Aula.*

AULA REGIS. See tit. *Aula.*

AULNEGER *or* AULNAGER (from *ulna*, an arm). The king's aulneger was an officer, who, on the regulation of the standard of measures in the reign of Richard the First, was appointed for a certain fee to measure all cloths made for sale. The office was abolished by stat. 11 & 12 Will. 3, c. 20.—1 *Bl.* 275.

AUMONE (from the Fr. *aumosne*, alms). Tenure in aumone is where lands are given in alms to some church or religious house, upon condition that some service or prayers shall be offered up at given times for the good of the donor's soul.—*Cowel.*

AURES. The cutting off the ears; it was a punishment inflicted by the Saxon laws on those who robbed churches, and afterwards on thieves in general.—*Cowel.*

AURUM REGINÆ. Queen's gold; a revenue formerly belonging to queen consorts during their marriage. —1 *Bl. Com.* 221. See further tit. *Queen's Gold.*

AUSTURCUS and OSTERCUS. A goshawk. Hence a faulconer who keeps those kinds of hawks is called an *austringer*. *Unum austurium* has sometimes been reserved in ancient deeds as a rent due to the lord.—*Cowel.*

AUTER DROIT (*another's right*). When a person holds an estate not in his *own* right, but in the right of *another*, he is said to hold it *en auter droit*. Thus if a tenant for years die, the term, being personal property, vests in his executor, who in such case would have the term *en auter droit*, or in the right of his testator, and subject to his debts and legacies. —2 *Bl.* 176, 177.

AUTERFOITS ACQUIT. The name of a plea pleaded by a criminal; signifying that he has been *formerly acquitted* on an indictment for the same offence; it being a maxim of the common law of England, that no man's life is to be put in jeopardy more than once for the same offence. —*Co.* 3 *Inst.*; 4 *Bl.* 335.

AUTERFOITS ATTAINT. A plea by a criminal, that he has been before attainted either for the same or some other offence. For wherever a man is attainted of felony by judgment of death, either upon a verdict on confession, by outlawry, and formerly by abjuration, he may plead such attainder in bar to any subsequent indictment on appeal for the same or any other felony. The reason of this is, that any proceeding on a second prosecution cannot be to any purpose, as the prisoner was dead in law by the first attainder, his blood was already corrupted, and he had forfeited all that he had.—4 *Bl.* 336.

AUTERFOITS CONVICT. A plea by a criminal that he has been *before convicted* of the same identical crime; it is similar in its nature to that mentioned in the last title but one.—4 *Bl.* 336.

AUTER VIE (*the life of another*). When a person holds an estate during another man's life, or so long as such a man shall live, he is called a tenant *pur auter vie*.—2 *Bl.* 120. See also tit. *Pur auter Vie.*

AUTRE DROIT. See tit. *Auter Droit.*

AUTREFOITS ACQUIT. See tit. *Auterfoits acquit.*

AUTREFOITS ATTAINT. See tit. *Auterfoits attaint.*

AUTREFOITS CONVICT. See tit. *Auterfoits convict.*

AUTRE VIE. See tit. *Auter Vie.*

AUXILIUM AD FILIUM MILITEM FACIENDUM ET FILIAM MARITANDAM. A writ directed to the sheriff of every county where the king or other lord had tenants, to levy of them reasonable aid towards the knighting of his son and marriage of his eldest daughter. — *Cowel.* No man was entitled to have this writ before his son had attained the age of fifteen years, or his daughter the age of seven years.—*F. N. B.* 82, *A.*; *West.* 1, *c.* 35; *Reg. Orig.* 87; *Glanvil, l.* 9, *c.* 8.

AUXILIUM CURIÆ. An order of court, or precept, for the citing or convening of one party at the suit of another.— *Paroch. Antiq.*

AUXILIUM FACERE ALICUI IN CURIA REGIS. A fiduciary office undertaken by some courtiers for their dependents in the country, to be another's friend or solicitor in the king's court.—*Paroch. Antiq.*

AUXILIUM REGIS. Money levied for the king's aid and for the public service.—*Cowel.*

AUXILIUM VICE-COMITI. The aid or customary dues formerly paid to sheriffs for the better support of their offices.—*Cowel.*

AVAGE or AVISAGE. A rent or payment exacted of every tenant of the manor of Writtle, in Essex, upon St. Leonard's day, for the privilege of pannage in the lord's woods.—*Cowel.*

AVENAGE (from Lat. *avena*). A certain quantity of oats paid to a landlord in lieu of some other duties, or as a rent from the tenant.—*Cowel.*

AVENTURE or ADVENTURE. An accident by which the death of a man is occasioned without felony.—*Britton, c.* 7.

AVERAGE (*averagium*). This word has various meanings. In maritime matters it seems to be used for the contribution made by the owners of a ship and the proprietors of goods on board, to those persons, who, for the preservation of the ship and for the goods and lives on board, have sacrificed their own property by casting it into the sea. It is called *average* because the contribution is proportioned and allotted after the rate and according to the value of each man's goods so preserved on board. Average is termed either *general* or *gross*—or *small, petty* or *accustomed.* General or gross average means the contribution which the owners of the ship and of the goods saved contribute for the relief of those whose goods are thrown overboard, so that all who profited by the lightening of the ship may bear a proportional loss of the goods thus thrown overboard for the common safety. It is said that all loss which arises in consequence of extraordinary sacrifices or expenses, incurred for the preservation of the ship and cargo, come within the description of *general* or *gross average.*—1 *Park on Ins.* 160 *to* 201; 1 *Stor. Eq. Jur.* 467; *Birkley* v. *Presgrave,* 1 *East,* 220; *Covington* v. *Roberts,* 2 *New Rep.* 378; 5 *Bos. & P.* 378. *Small, petty* or *accustomed average* consists in such charges and disbursements as, accord-

ing to occurrences and the custom of every place, the master necessarily furnishes for the benefit of the ship and cargo, either at the place of loading or unloading, or on the voyage; such as the hire of a pilot for conducting a vessel from one place to another; towage, light money, beaconage, anchorage, bridge toll, quarantine and such like.—1 *Park on Insur.* 161, *ed.* 1817.

AVER CORN. A reserved rent in corn, paid to religious houses by their farmers or tenants.—*Cowel.*

AVER LAND. It seems to have been such lands as the tenants ploughed and manured *cum averiis suis* for the use of the monastery or lord of the soil.—*Cowel.*

AVERIUM. An *heriot*, consisting of the best live beast the tenant dies possessed of.—2 *Bl.* 424.

AVERIIS CAPTIS IN WITHERNAM. A writ for the taking of cattle to a person's use, who has had his own cattle taken by another, and driven out of the county where they were taken, so that they cannot be replevied.—*Reg. Orig.* 82; *Cowel.*

AVERMENT (*verificatio*). An allegation in pleading is so termed. It also signifies an offer of the defendant in an action to make good or justify an exception pleaded in abatement or bar of the plaintiff's action: and it signifies the act as well as the offer of justifying the exception, and not only the form but the matter thereof. 3 *Bl.* 312.

AVERRARE. To carry goods in a waggon, or upon horses; a duty required of some customary tenants. —*Cowel.*

AVER SILVER. A subscription or customary payment so called.—*Cowel.*

AVETTING. Abetting, helping, or assisting.—*Scotch Dict.; Tomlins.*

AVISAGE. See tit. *Avage.*

AVISAMENTUM. Advice or counsel;—*de avisamento et consensu concilii nostri concessimus* was the common form of our king's grants.—*Cowel.*

AVOID, To. To make void, to annul, &c. For the meaning of the word as used in pleading in conjunction with the word *confess*, see title *Confession and Avoidance;* also the next title.

AVOIDANCE. Becoming void, vacant, or empty. Thus, it is applied to a benefice when it has become void of an incumbent. As used in pleading it seems to retain its popular signification. Thus, when in pleading it is said that he confesses and *avoids*, it means that he admits the facts stated by his adversary, but *avoids* or escapes from the effect of them, by advancing something in answer to them. See tit. *Confession and Avoidance.*

AVOIDANCE OF A DECISION. A parliamentary phrase, signifying the evading or superseding a question, or avoiding coming to a decision upon a question before the house. The usual modes in which a decision upon a question before the house is evaded or superseded are, 1, by adjournment of the house; 2, by motion "that the orders of the day be read," or that the house "pass to the other orders;" 3, by "moving the previous question;" and 4, by amendment. The motion for an adjournment is "that this house do *now* adjourn," and which, if carried, of course supersedes or puts an end

to all business before the house for that day. Moving that the "orders of the day be read," or that the house "pass to the other orders," may be thus explained. In consequence of the pressure of business in the House of Commons, it is the practice to set apart certain days for considering the "orders of the day," i. e. for considering those matters which the house have already agreed to consider on some particular day, or *ordered* to come on for discussion on such day; and it is the duty of the house on such days to dispose of the matters so appointed to come on before proceeding with other business; and if in violation of this rule the house has entered upon another question, the debate upon it may be interrupted or put a stop to by the above mentioned motion that the "orders of the day be now read," or, as it is also termed, by the house "passing to the other orders." "Moving the previous question" simply means a motion that the votes of the house be previously taken as to the propriety or expediency of coming to any decision on the question before the house. This generally takes place when the Speaker is about to take the votes of the house upon the question before them, and some member is anxious that the decision of the house thereon should be deferred to some future period, and so endeavours to intercept or prevent the Speaker putting the question to the vote by bringing before the house, as a previous or intervening question, the propriety or expediency of the proposed act of the Speaker in putting the question to the vote. The form of this motion is "that this question be *now* put," that is, that the question before the house be *now* put to the vote, and those who wish to avoid the question, or to have the decision of the house thereon deferred, of course vote against this motion, which, if decided in the negative, prevents the Speaker putting the main question to the vote. The mode in which the decision upon a question is evaded or superseded by an amendment is effected by moving that all the material words of the question be omitted and other words of a different import substituted for them. Thus, on the 7th May, 1802, a motion was made in the Commons for an address, "expressing the thanks of this house to his majesty for having been pleased to remove the Right Hon. Wm. Pitt from his councils;" upon which an amendment was proposed and carried, which left out all the words after the first, and introduced others of a directly opposite meaning, by which a new question was substituted, in which the whole policy of Mr. Pitt was commended. If an amendment of this sort be agreed to by the house, it is obvious that no opinion is expressed directly upon the main question, because it is determined that the original words "shall not stand part of the question," and the vote of the house is afterwards taken directly upon those substituted, and so in effect upon a new question.—24 *Com. J.* 650; 30 *Ib.* 70; 36 *Hans. Parl. Hist. pp.* 598, 654; *May on Parliament.*

AVOW. See tit. *Advow.*

AVOWANT. The defendant in an action of replevin is so called, when he *avows* taking the distress. See 3 *Bl.* 150. See also the word more fully explained under title *Replevin.*

AVOWER. See tit. *Advowee.*

AVOWRY. When a person takes a distress for rent or other thing, and the party on whom the distress is taken brings an action of replevin, then the taker of the distress shall justify in his plea the taking of it, and if he took it in his own right he

ought to show it, and *avow* the taking, which is thence called his *avowry*.—*Les Termes de la Ley*.

AVOWTERER. An adulterer; and the crime is hence sometimes called *avowtry*.

AVOWTRY. See tit. *Avowterer*.

AWAIT. As used in 13 Rich. 2, c. 1, it signifies *way-laying* or *lying in wait*.—*Cowel*.

AWARD. The judgment or decision of one or more arbitrators. See tit. *Arbitrator*.

AYLE. See *Aiel*.

B.

BACKBERINDE. Bearing upon the back, or about a man. It is used by Bracton as a sign or circumstance of theft apparent, which the civilians called *furtum manifestum*.—*Bract*.

BACKING A WARRANT. The warrant of a justice of the peace cannot be enforced or executed in any other county than that in which he has jurisdiction, unless a justice of such other county wherein it is to be executed *indorses* or writes on the back of such warrant an authority for that purpose, which is thence termed *backing the warrant*.—2 *Robinson's Mag. Assist.* 572; 24 *Geo.* 3, *c.* 55; 5 *Geo.* 4, *c.* 18, *s.* 6.

BAIL (*ballium*). The setting at liberty of a person who is arrested in any action civil or criminal, on his finding sureties for his re-appearance. It is however usually understood for the sureties themselves; as if A. is arrested and *puts in bail*, this means that he has found persons who have become sureties for his re-appearance, and who take upon themselves the responsibility of his returning or not returning when required. There are several kinds of bail, of which the principal are as follow; viz. 1. *Bail below* or *bail to the sheriff*; 2. *Bail above, special bail*, or *bail to the action*; 3. *Bail in Error*; 4. *Common bail*. Bail *below* or *to the sheriff* is such as a defendant puts in when arrested upon a writ of capias. This he does by entering into a bond to the sheriff with sufficient sureties conditioned for his appearance within the period required by the writ, and which bond the sheriff is compelled by statute to accept and to discharge the defendant out of custody. Bail above, special bail, or bail to the action, are persons whom the defendant procures to become his sureties for the ultimate payment of the debt and costs in the action, in the event of judgment passing against him, or as an alternative that he shall surrender himself to prison. They are termed bail *to the action*, because they are responsible for the defendant abiding by the event of the action, and obeying the judgment of the court therein, in contradistinction to bail *to the sheriff*, who only undertake that the defendant shall appear according to the exigency of the writ, and provide bail to the action. The undertaking of the sureties or bail above, is drawn upon a piece of parchment by the defendant's attorney, and is technically termed the *bail piece*. 3. *Bail in error*: These are sureties which a party prosecuting a writ of error, commonly called the *plaintiff in error*, is required to find, and who undertake that the plaintiff in error shall prosecute his writ of error with effect, and that in case the plaintiff be nonprossed, or the judgment in the court below be affirmed, he shall pay all the debt, damages, and costs adjudged upon the former judgment, and all costs and damages to be awarded by reason of the delay of execution on

such former judgment.—3 *Jac.* 1, *c.* 8; 3 *Car.* 1, *c.* 4, *s.* 4; 19 *Geo.* 3, *c.* 70; 6 *Geo.* 4, *c.* 96, *s.* 1. 4. *Common bail.* This word simply signifies an *appearance;* for an explanation of which see that title.

BAIL ABOVE. See tit. *Bail.*

BAIL BELOW. See tit. *Bail.*

BAIL IN ERROR. See tit. *Bail.*

BAIL TO THE ACTION. See tit. *Bail.*

BAIL TO THE SHERIFF. See tit. *Bail.*

BAIL BOND. See tit. *Bail.*

BAIL COURT. An auxiliary court of the Court of Queen's Bench at Westminster, wherein points connected more particularly with pleading and practice are argued and demined.

BAIL PIECE. See tit. *Bail.*

BAILABLE ACTION. An action in which a defendant is obliged either to find bail or go to prison until the demand for which the action is brought be satisfied, or he be otherwise discharged from custody.

BAILIFF (*ballivus*). There are various sorts of bailiffs; as *bailiffs* of liberties; sheriff's *bailiffs; bailiffs* of lords of manors, &c. &c. Sheriffs are also called the king's *bailiffs*, and the counties wherein it is their duty to preserve the rights of the king are frequently called their *bailiwicks;* a word introduced by the Norman princes in imitation of the French, whose territory is divided into *bailiwicks*, as that of England into counties. The word *bailiff*, however, usually signifies sheriffs' officers who are either bailiffs of hundreds or special bailiffs. Bailiffs of hundreds are officers appointed over those respective districts, by the sheriffs, to collect fines therein, to summon juries, to attend the judges and justices at the assizes and quarter sessions, and also to execute writs and process in the several hundreds. Special bailiffs are that lower class of persons employed by the sheriffs for the *express* purpose of serving writs, and making arrests and executions, &c.—1 *Bl.* 344. Those persons also who have the custody of the king's castles are called bailiffs, as the bailiff of Dover castle. The chief magistrates of particular jurisdictions are also called *bailiffs*, as the bailiff of Westminster, for example. There are also *bailiffs* of courts baron; *bailiffs* of the forest, &c.—*Cowel; Termes de la Ley.*

BAILIWICK (*balliva*). A county of which the sheriff is the bailiff; it also formerly signified that liberty or exclusive jurisdiction exempted from the sheriff over which the lord of the liberty appointed a bailiff. See further tit. *Bailiff.*

BAILMENT (from the Fr. *bailler*). A delivery of goods in trust, upon an express or an implied contract, that the trust shall be faithfully performed on the part of the *bailee* (or the person to whom the goods are delivered), as if cloth be delivered (or in legal language) *bailed* to a tailor to make a suit of clothes, he has it on an implied contract to render it again when made, and that in a workmanlike manner.—2 *Bl.* 451.

BAIRMAN. An insolvent debtor, left destitute, bare, and naked.—*Cowel.*

BALENGA. A territory or precinct.—*Cowel.*

BALIVA or BALLIVA. A bailiwick or jurisdiction.—*Cowel.*

BALIVO AMOVENDO. A writ to remove a bailiff from his office for want of sufficient living in his bailiwick.—*Cowel.*

BAN or BANS. A public notice given of any thing. In England this word is more especially used in publishing matrimonial contracts in the church before marriage, in order that if any person has any thing to say against the marriage, he may be enabled to make his objection before it is consummated.—*Les Termes de la Ley.*

BANC or BANCO, *Sittings in.* The sittings which the respective superior courts of common law hold during every term, and on certain appointed days after term, for the purpose of hearing and determining the various *matters of law* argued before them, are so called, in contradistinction to the sittings at *nisi prius*, which are held for the purpose of trying *issues of fact.* The former are usually held before *four* of the judges; at the latter one judge only presides.

BANCO. See tit. *Banc.*

BANE (from Saxon *band*, a murderer). The destruction or overthrow of any thing; as he who is the cause of another man's death is said to be *le bane*, i. e. a malefactor.—*Bract. lib.* 2, *tract.* 8.

BANERET (*bannerettus, miles vexilarius*). A baneret is said to be a knight made in the field, with the ceremony of cutting off the point of his standard and so making it like a *banner.* They are accounted so honourable that they are permitted to display their arms in a *banner* in the field, as barons do. See *Selden's Tit. of Hon.*

BANISHMENT (from the Fr. *banisement*). A punishment inflicted on an offender by compelling him to quit the realm. There are two kinds of it, one voluntary and upon oath, termed *abjuration*; the other by compulsion for some offence or crime.—*Cowel.*

BANK (Lat. *bancus*, Fr. *banque*). Signifies *bench*, and is commonly used for the bench or seat of judgment; as *bancus regis*, or in French *bank le roy*, means the king's bench; *bancus communium placitorum*, or *bank de common pleas*, the bench of common pleas.—*Cromp. Juris. fo.* 67, 91; *Cowel.*

BANKRUPT. A person in trade or business who from misfortunes or other circumstances is unable to meet the demands of his creditors; and has signified his inability to do so, by having done some act which the law defines to be an act of bankruptcy. The word is said to be derived from *bancus*, a bench or counter, and *ruptus*, broken; signifying that his shop or place of business is broken or gone.

BANNIMUS. The form of expulsion of any member from the university of Oxford, by affixing the sentence in some public places, as a promulgation of it.—*Cowel.*

BANNITUS or BANNIATUS. An outlaw or banished man.—*Cowel.*

BANNUM or BANLEUGA. The limits or bounds of a manor or town; as *Banleuga de Arundel* is used for all comprehended within the limits or lands adjoining, and so belonging to the castle or town.—*Cowel.*

BAR or BARR. An answer, a preclusion, a destruction, or a prevention. Thus, when a defendant in any action pleads a plea which is a sufficient answer to the plaintiff, and which at once destroys his action, it is termed a plea in *bar.* In the above sense, as well as in others, it signifies to prevent or to destroy; as when it

is said that jointures have been introduced as a *bar* to the claim of dower, it means as a *prevention* to that claim. *Bar* also signifies the place where the barristers stand in court to plead the causes of their clients, whence the term *barrister*. A trial *at bar* is a trial which is had before the four judges of the court in which the action is brought, and is resorted to only in cases of unusual difficulty. It is called a trial *at bar*, in contradistinction to a trial at *nisi prius*, where one judge only presides. —3 *Bl.* 352; *Les Termes de la Ley; Co. Lit.* 372 (*a*); *Boote's Suit at Law*, 183, *n.* 1.

BAR AT LARGE. See tit. *Blank Bar*.

BAR FEE. A fee of twenty pence which every prisoner acquitted of felony pays to the gaoler.—*Cowel.*

BARGAIN AND SALE. The name of an instrument or conveyance by which freehold property is granted or transferred from one person to another. This species of conveyance was introduced by the operation of the stat. 27 Hen. 8, c. 10, called the statute of uses, and is a kind of real contract, whereby one man for some pecuniary consideration bargains and sells, that is, contracts to convey the land to some other man, and becomes by such bargain a trustee for or (as the law terms it) seised to the use of such other man, and then the statute completes the purchase. But as it was foreseen that conveyances thus made would want that notoriety which the old common law conveyances were calculated to give, it was therefore enacted by 27 Hen. 8, c. 16, that such bargains and sales should not pass a freehold, unless the same were made by *indenture*, and *enrolled* within six months in one of the courts of Westminster Hall, or with the *custos rotulorum* of the county wherein the lands which are the subject of conveyance lie. This was enacted in order to compel the parties to reduce their contract into writing, and to prevent the frauds of secret conveyances, which *enrolment* would effectually do, by affording the public an inspection of every such conveyance.—2 *Bl.* 339.

BARON. A title of nobility one degree below a viscount.—1 *Bl. Com.* 398.

BARON AND FEME. Husband and wife.—1 *Bl.* 433.

BARONET. An hereditary dignity created by letters patent, and descendible to the male heirs of the grantee.—1 *Bl.* 403.

BARONS OF THE EXCHEQUER. The judges of the court of exchequer are so called, the same as the judges of the courts of king's bench and common pleas are called *justices*.

BARONY (*baronia*). That honour and territory which give title to a baron, comprehending his lands, fees, and other baronial rights and dues. —*Blount.*

BARR. See tit. *Bar*.

BARRATOR or BARRETOR. An exciter or promoter of suits and quarrels between his majesty's subjects, either at law or otherwise.—4 *Bl.* 134.

BARRATRY. Any act of the master or of the mariners of a ship which is of a criminal or a fraudulent nature, tending to the prejudice of the owners of the ship without their consent or privity; as by running away with the ship, sinking her, deserting her, or embezzling the cargo.—1 *Park on Ins.* 137, 138; *Knight* v. *Cambridge*, 1 *Str.* 581; *Vallejo and another* v. *Wheeler*, *Cowp.* 143; 4 *Bl.* 134.

BARRE (from the old Fr. *bar*, a stay or stoppage). Was formerly used to signify such a plea as amounted to a good and effectual answer or defence to an action. It appears also to have been sometimes used to signify any kind of plea, without reference to its particular nature.—*Les Termes de la Ley; Finch, L.* 397, *c.* 35; *Boote's Suit at Law*, 168.

BARRISTER or BARRASTER (*barrasterius*). A counsellor learned in the law who pleads at the bar of the courts, and takes upon himself the advocacy or the defence of causes given him by those who retain or employ him.

BARRISTER AT LAW. See tit. *Barrister*.

BARTON or BURTON. A term used in Devonshire and other parts for the demesne lands of a manor; sometimes for the manor-house itself, and sometimes for out-houses and fold-yards.—*Cowel*.

BAS CHEVALIERS. Low or inferior knights, by tenure of a base military fee, as distinguished from baronets and banerets, who were the chief or superior knights.—*Cowel*.

BASE COURT (from *cour basse*). Any inferior court, not of record, as the court baron, &c.—*Hitchin, fol.* 95, 96; *Cowel*.

BASE ESTATE (from *bas estat*). That estate which *base* tenants have in their land, and base tenants are those who perform the lord's services in villenage.—*Cowel*. And see next title.

BASE FEE. A base or qualified fee is an estate which hath some qualification subjoined thereto, and which must cease or be determined whenever such qualification is at end. As in the case of a grant to A. and his heirs, *tenants of the manor of Dale*; in this instance, whenever the heirs of A. cease to be tenants of that manor, the grant is entirely defeated. So when Henry the Sixth granted to John Talbot, lord of the manor of Kingston-Lisle, in Berks, that he and his heirs, *lords of the said manor*, should be peers of the realm, by the title of barons of Lisle; here John Talbot had a *base or qualified fee* in that dignity, and the instant he or his heirs quitted the seigniory of this manor, the dignity was at end. These estates are fees, because it is *possible* that they may endure for ever in a man and his heirs; yet as that duration depends on certain collateral circumstances, which qualify and debase the purity of the donation, it is therefore called a *base* or *qualified* fee. —2 *Bl.* 109, 110.

BASKET TENURE of lands.—See tit. *Canestellus*.

BASTARD. A person not born in lawful wedlock. The English law does not require that the child should be *begotten* after lawful wedlock, but it is an indispensable condition to make it legitimate that it should be *born* after that period.

BASTARDY. A defect of birth objected to one born out of lawful wedlock.—*Bracton*.

BASTARD-EIGNE. See tit. *Eigne*.

BASTON. A French word signifying a staff or club. By some of the statutes it also signifies one of the wardens of the *Fleet's* servants or officers, who attends the king's court with a painted staff, for the taking into custody such as are committed by the court.—*Cowel*.

BAS-VILLE. The suburbs of a town.—*Blount*.

BATABLE GROUND. The land lying between England and Scotland when the two countries were distinct, and which land was a question or a subject of *debate* to which it belonged.—*Cowel.* See *Lamb. Brit.* tit. *Cumberland.*

BATTEL (from *battaile*). The trial by wager of *battel*, was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that heaven would give the victory to him who was in the right. For a full and interesting account of this superstitious ceremony the student is referred to 3 *Bl.* 337.

BATTERY. See tit. *Assault and Battery.*

BEARERS. Persons who oppress or bear down others.

BEASTS OF CHASE (*ferœ campestres*). Are the buck, the doe, the fox, the marten, and roe.—*Manwood's Forest Law; Cowel.*

BEASTS OF THE FOREST (*ferœ sylvestres*), also called *beasts of venery*, are the hart, the hind, the hare, the boar, and the wolf.—*Manwood.*

BEASTS AND FOWL OF WARREN. Are the hare, the coney, the pheasant, the partridge, the rail, the quail, the woodcock, mallard, and heron.—*Manwood.*

BEAU-PLEADER (from *beauplaider*). Signifies, at common law, a writ upon the statute of Marlbridge, 52 H. 3, c. 11, whereby it is provided that neither in the circuits of the justices, nor in counties, hundreds, or courts-baron, any fines shall be taken of any man for what is termed *fair pleading*, i. e. for not pleading fairly or aptly to the purpose; upon which statute this writ was ordained against those who violate the law herein.—*Cowel.*

BEDEL or BEADLE (Sax. *bydel*). A messenger, crier, or apparitor of a court, who cites men to appear and answer therein. Many other kinds of subordinate officers are so called. —*Cowel.*

BEDELARY (*bedelaria*). The same in reference to a *bedel* as the word *bailiwick* is to a *bailiff*; which see under those titles.

BEDEREPE or BIDEREPE (from Sax. *biddan*, to intreat or pay, and *repe*, to reap corn). A service which some tenants were anciently bound to perform, as to reap their landlord's corn in harvest.—*Cowel.*

BENCH WARRANT. The process issued against a party against whom an indictment has been found, for the purpose of bringing him into court to answer the charge preferred against him. When an indictment has been found for a misdemeanor during the assizes or sessions, it is the practice for the judge attending the assize, or for two of the justices attending the sessions, to issue a bench warrant signed by him or them, to apprehend the defendant.—*Cowp.* 239; *Haw. Pl. Cor.*; 1 *Ch. Crim. Law*, 338, 339.

BENCHER. A dignitary of the Inns of Court is so termed. Each Inn of Court is presided over by a certain number of benchers, who exercise the right of admitting candidates as members of their society, and also of ultimately calling them to the bar. They are usually selected from those of their members who have distinguished themselves in their profession; and it is the ordinary practice for each inn of court to elect its member a bencher as soon

as he has attained the rank or degree of queen's counsel.

BENEFICE (*beneficium*). Generally taken for any ecclesiastical living, or church preferment, whether a dignity or other; and it must be given for life, not for years or at will. —4 *Bl.* 107.

BENEFICIAL INTEREST. A person is said to have a *beneficial interest* in anything, when he has or is entitled to the real benefit, advantage, or property in such thing. Thus if B.'s estate is held by A. in trust for him, B. would be the party who had the beneficial interest in the estate, although the *legal* title to the estate would be vested in A.

BENEFICIO PRIMO ECCLESIASTICO HABENDO. A writ directed from the king to the chancellor or lord keeper to bestow the benefice that shall first fall to the king's gift above or under such a value, upon this or that man.—*Cowel.*

BENEFIT OF CLERGY. See tit. *Clergy.*

BENEFIT OF THE ACT. See tit. *Taking the Benefit of the Act.*

BENERETH. A service which the tenant rendered to his lord with his plough and cart; sometimes called *benryrden* and *benyrden.* — *Cowel; Lamb. Itin.* p. 412.

BENEVOLENCE. As used in history and in the chronicles, signifies a voluntary gratuity given by the subjects to the king.—1 *Bl.* 140.

BENEVOLENTIA REGIS HABENDA. The form in ancient fines and submissions of purchasing the king's pardon and favour, in order to be restored to place, title, or estate.—*Cowel.*

BERGMASTER (fr. Sax. *berg* a hill). A bailiff or chief officer among the Derbyshire miners, who, among other parts of his office, also executes that of coroner.—*Cowel.*

BERGHMOTH or BERGHMOTE (fr. the Sax. *berg* a hill, and *gemote* an assembly). A court held upon a hill for deciding pleas and controversies among the Derbyshire miners.—*Blount.*

BERNET (fr. the Sax. *byran* to burn). It sometimes signifies any capital offence, but more particularly that of house-burning.—*Cowel.*

BERTON. See tit. *Barton.*

BERWICA or BERWICHA. A hamlet or village appurtenant to some town or manor.

BESAILE or BESAYLE (from *bisayeul*). A writ that lay when a great grandfather died seised of lands and tenements in fee simple, and on the day of his death a stranger entered and kept out his heir.—*Cowel.* See also tit. *Aiel.*

BEVERCHES. Customary services performed at the lord's request by his inferior tenants.—*Cowel.*

BEYOND THE SEAS. No part of the United Kingdom of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, or Sark, nor any islands adjacent to any of them (being part of the dominions of her majesty) are deemed beyond the seas within the meaning of the 3 & 4 Will. 4, c. 27. It appears, however, to have been held that Dublin, or any place in Ireland, was beyond the sea within the meaning of the statute of limitations, 21 Jac. 1, c. 16.—*King* v. *Walker*, 1 *Bl. Rep.* 286; *Nightingale* v. *Adams*, *Show.*

91; *Shelford's Real Property Statutes*, 181, *4th ed.*

BIGAMUS. A person guilty of the crime of bigamy.

BIGAMY (*bigamia*). Properly signifies being twice married; but as it is generally understood now, it signifies the crime of polygamy, or having a plurality of wives at once. 4 *Bl.* 163.

BILAGINES. Bye laws of corporations, &c. See tit. *Bye Laws.*

BILANCIIS DEFERENDIS. A writ formerly in use, directed to a corporation for the carrying of weights to any haven, there to weigh the wools that any man is licensed to transport. *Reg. Orig. fol.* 270; *Cowel.*

BILINGUIS. It is used in a legal sense for a jury composed partly of Englishmen and partly of foreigners, because the cause to be tried by them is between an Englishman and a foreigner.—*Cowel.*

BILL (*billa*) has various significations in law proceedings. It is commonly taken for a declaration in writing expressing either the wrong the complainant has suffered by the defendant, or else some fault that the party complained of has committed against some law or statute of the realm. Such bill is sometimes addressed or exhibited to the lord chancellor, especially where the wrongs done to the complainant are matters of conscience; and sometimes they are addressed and preferred to others having jurisdiction in the matter; according as the law whereon they are grounded directs. This bill contains the fact complained of, the damages thereby suffered, and a petition that process may issue against the defendant for redress. In criminal matters, when a grand jury upon any presentment or indictment, consider the same to be probably true, they write on it two words, *billa vera*, and thereupon the accused party is said to stand indicted of the crime, and is bound to make answer to it; and if the crime concern the life of the person indicted, it is then referred to another inquest, called the jury of life and death, by whom, should he be found guilty, he stands convicted of the crime, and is by the judge condemned accordingly. Bill is also a common engagement for money given by one man to another; and is sometimes with a penalty, called *penal bill*, and sometimes without a penalty, then termed a *single bill*. By a *bill* was commonly understood a single bond without a condition; and it was formerly the same as an obligation, save that it was called *bill* when in English, and an obligation when in Latin. As these kinds of bills are now superseded by the introduction of *bills of exchange* and *bonds*, it would be of little use to enter into detail upon this subject.—*Cunningham's Law Dictionary; Termes de la Ley.*

BILL IN EQUITY OR CHANCERY. The method of instituting a suit in the Court of Chancery is by addressing a *bill* to the Lord Chancellor in the nature of a petition. This *bill* is neither more nor less than a statement of all the circumstances which gave rise to the complaint, and a prayer or petition for relief, according as the nature of the case may require. When this bill is drawn up or prepared, it is left with the proper officer of the court in order to be filed; and this is what is termed *filing a bill in equity.*—*Gray's Chan. Prac. p.* 3; 3 *Bl.* 442.

BILL OF EXCEPTIONS. If during a trial the judge in his directions to the jury, or in his decision, mistakes the law, either through ignorance, inadvertence, or design, the counsel

on either side may require him publicly to seal a *bill of exceptions*, which is a statement in writing of the point wherein he has committed the error, and which statement, by fixing his seal to, he thus acknowledges.—*Smith's Action at Law, p.* 82; 3 *Bl.* 372. This statement should be put in writing while the court is sitting, and in the presence of the judge who tried the cause, and signed by the counsel on each side; after which it is formally drawn up, and tendered to the judge to be sealed. A bill of exceptions is said to be in the nature of an appeal from the judgment or decision of the court below to a court of error.—*Wright* v. *Sharp*, 1 *Salk.* 288; *Gardner* v. *Bailey*, 1 *Bos. & P.* 32; *Wright* v. *Tatham*, 7 *Ad. & E.* 331.

Bill of Exchange. A *bill of exchange* is defined by Blackstone to be an "open letter of request from one man to another, desiring him to pay a sum named therein to a third person on his account." The person who draws or makes the bill is called the *drawer;* the person to whom it is addressed is called the *drawee;* and when the drawee has undertaken to pay the amount (which undertaking he signifies by writing across the bill of exchange the word "accepted," together with his *name* and the place where the money is to be paid), then he is called the *acceptor;* the person to whom the money is ordered to be paid is called the *payee;* and if he transfers it over to another (which he does by simply writing his name across the back) he is then called the *indorser*, and the person to whom he thus transfers it is called the *indorsee*, which latter person may also, if he pleases, in his turn transfer it to another party (by the same process of signing his name on the back, or *indorsing* it as it is termed), and thus it may be transferred from one person to another *ad infinitum*, the party transferring it always being called the *indorser*, and the party to whom transferred, the *indorsee*. To illustrate the subject further, a common form of a bill of exchange is here given:—

£100.

London, June 1, 1838.

One month after date please to pay to George Montague or order the sum of one hundred pounds, and place the same to my account.

John Smith.

To Mr. John Harrison,
Merchant,
50, Broad Street.

Now, in the above form "John Smith" is the *drawer* of the bill, "John Harrison" is the *drawee* (and when he has signified his acceptance of the bill by writing across the face of it

Accepted,
John Harrison,

he is then also termed the *acceptor*), and "George Montague" is the *payee*. When the *acceptor* of a bill of exchange is a man of substance and of good credit, it renders it easily negociable, and, consequently, almost as valuable as a bank note.—*Chitty on Bills of Exchange.*

Bill of Lading. A bill of lading is a memorandum signed by the captain or master of a ship, acknowledging the receipt of goods on board, and undertaking to deliver them in good order and condition at the port for which they are destined. One of these bills is usually kept by the captain, one by the person who ships the goods, and one is sent to the party abroad to whom the goods are going, who, on the arrival of the vessel at port, is enabled to claim his goods on presenting to the captain his bill of lading.—*M'Culloch's Com. Dict.*

BILL OF MIDDLESEX. A species of process by which actions were formerly commenced in the Court of Queen's Bench. It was a kind of precept directed to the sheriff of the county, commanding him to take the body of the defendant, and have it, on a certain day therein mentioned, in court, wheresoever the lord the king should be in England.—*Boote's Suit at Law*, 38. This mode of proceeding was abolished by the Uniformity of Process Act, 2 Will. 4, c. 39.

BILL, PARLIAMENTARY. A parliamentary bill has been well described as the "draft or skeleton of a statute." Bills are divided into two classes, viz. public and private bills; the former are such as involve the interests of the public at large, and when passed by all the three branches of the legislature, become a portion of the public statutes of the realm; the latter are such as have reference to the interests of private individuals, and are frequently introduced to enable them to undertake works of public utility at their own risk; such, for instance, are the various bills introduced for the purpose of establishing railway companies; such also are those of naturalization, for change of name, for divorce, &c.—See *May's Treatise on Parl.*

BILL OF PARTICULARS. A bill of particulars, or, as it is frequently termed, a *particular of plaintiff's demand*, is a statement in writing of what the plaintiff seeks to recover in his action. Its object is to furnish the defendant with a better or more specific statement of the plaintiff's cause of action than is to be collected from the declaration. The bill of particulars "differs from the declaration inasmuch as the one discloses the *nature* and legal effect of the plaintiff's claim, the other its component ingredients."—*Lush's Pr.* 374; *Pylie* v. *Stephen*, 6 *Mee. & W.* 814, *per curiam.*

BILL OF RIGHTS. The statute 1 Will. & Mary, stat. 2, c. 2, is so termed because it declares the true rights of British subjects.—*Tomlins.*

BILL OF SALE. A contract, under seal, by which a man transfers the right or interest which he has in goods and chattels.—*Cunningham.*

BILL OF STORE. A kind of license granted at the custom-house to merchants, to carry such stores and provisions as are necessary for their voyage custom free.—*Cunningham.*

BILL OF SUFFERANCE. A license granted at the custom-house to a merchant, to suffer him to trade from one English port to another without paying custom.—*Cunningham.*

BILLS, PUBLIC AND PRIVATE. A bill, in the language of the legislature, is the draft of an act of parliament as originally submitted to either house of parliament, and which having gone through its various stages in both, and received the royal assent, becomes an act of parliament. Bills are of two classes, public and private; the former are brought in by members upon a motion of leave, and the latter are introduced upon petition.—See tit. *Bill, Parliamentary.*

BIRETTUM. The cap or coif of a judge or serjeant at law.—*Cowel.*

BI-SCOT. At a sessions of sewers held at Wigenhale, in Norfolk, it was decreed, that if any one in those parts should not repair his proportion of the banks, ditches, and causeys, by a day assigned, twelve pence for every perch unrepaired (which is called a bilaw) should be levied upon

him; and if he should not by a second day given him accomplish the same, then he should pay for every perch two shillings, which is called *biscot.*—*Hist. of Embanking and Draining, fol.* 254; *Cowel.*

BLACK ACT. The stat. 9 Geo. 1, c. 22, since repealed by 7 & 8 Geo. 4, c. 27, was so termed from the circumstance of its having been occasioned by devastations committed near Waltham, in Hampshire, by persons in disguise, with their faces blacked.

BLACK MAIL (fr. the Fr. *maille*). It denotes in the northern counties a certain rate of money, or other consideration, paid unto certain persons inhabiting near the borders, who are allied with robbers within those counties, in order to be protected by them from the robbers who frequent those parts.—*Cowel.*

BLANCH FIRMES. In old times the crown rents were many times reserved in *libris albis*, or *blanche firmes*, in which case the buyer was held *dealbare firmam*; that is to say, his base money or coin, worse than standard, was melted down in the exchequer, and reduced to the fineness of standard silver; or instead thereof, he paid to the king twelve pence in the pound, by way of addition.—*Lowndes's Essay on Coins; Cowel.*

BLANK BAR. A plea which a defendant sometimes pleads in an action of trespass *quare clausum fregit*, when he wishes to compel the plaintiff to assign or point out with greater particularity the place where the trespass was committed. Thus, if the grievance alleged in the declaration is the breaking of the plaintiff's close in a certain parish, without further particularizing the close, and the defendant should have any freehold land in the same parish, he may be supposed to mistake the close mentioned in the declaration for his own, and may therefore consistently enough plead that the close in which the trespass was committed is his own freehold; which is called by the several appellations of *the common bar*, *bar at large*, or *blank bar.*—*Step. Pl.* 250, 251; 2 *Cro.* 594.

BLENCH, BLANCH-HOLDING. See tit. *Alba Firma.*

BLOODWIT or BLOODWITE (from Sax. *blod*, and the old English *white*, signifying *misericordia*). A word often used in ancient charters for an amerciament for bloodshed. *Skene, de Verbor. Signif.*, spells it *bluidveit*, which he says in English is the same as *injuria* or *misericordia* in Latin; it being as the Scotchmen call it an *unlaw* for a wrong or injury, as is the effusion of blood; for he who hath bloodwit granted him, has liberty to take all amerciaments of courts for the shedding of blood. It evidently appears from the highest authorities, that it signified a sort of fine or penalty, paid as an atonement for the shedding of blood, and for which, if the criminal party himself could not be discovered, the place where the blood was shed was considered to be answerable.—*Fleta; Paroch. Antiq.* 114.

BLOODY-HAND signifies the apprehension of a trespasser in the forest against venison, with his hands or other parts *bloody*, which, although he was not found in the act of chasing or hunting, was considered as circumstantial evidence of his having killed deer.—*Manwood.*

BOCK-HORD or BOOK-HOARD. A place where books, evidences, or writings are kept.—*Cowel.*

BOCKLAND (Sax. *quasi*, bookland).

An inheritance or possession held by the evidence of written instruments. It was one of the titles by which the English Saxons held their lands, and being always in writing, was hence called *bockland*, which signified *terram codicillarium* or *libratium*, deed land or charter land. It was the same as *allodium*, being descendible according to the common course of nature and nations, and devisable by will. This species of inheritance was usually possessed by the *Thanes* or nobles.—*Spelman on Feuds.*

BOIS. See tit. *Boscus.*

BOLTING. A term formerly used in our inns of court, but more particularly in Gray's inn, signifying the private arguing of cases. It was carried on thus: an *ancient* and two *barristers* sat as judges, three students brought each a case, out of which the judges chose one to be argued, which done, the students began the argument, and after them the *barristers.* It was inferior to mooting, and may perhaps be derived from the Sax. *bolt*, a house; because carried on privately in a house for instruction.

BONA CONFISCATA. The forfeiture of lands and goods for offences committed.

BONA FIDE. We say that such a thing is done *bona fide*, i. e. really, honestly, with *good faith*, without fraud, &c.

BONA GESTURA. Good abearing, or good behaviour.—*Cunningham.*

BONA NOTABILIA. Such goods as a party dying has in another diocese than that wherein he dies, amounting at least to *5l.*, which whoever has, must have his will proved before the archbishop of that province, unless by composition or custom, other dioceses are authorised to do it, where *bona notabilia* are rated at a greater sum. If, however, a person happens to die in another diocese than that wherein he lives, while on a journey, what he has about him of the value of *5l.* is not *bona notabilia.*—*Book of Canons*, 1 *Jac. can.* 92, 93; *Cunningham.*

BONA PATRIA. An assize of countrymen, or good neighbours, sometimes called *assisa bonæ patriæ*, when twelve or more are chosen out of the country to pass upon an assize; and they are called *juratores*, because they swear judicially in the presence of the party.—*Skene de Verb. Sig.*

BONA PERITURA. Perishable goods.

BONA VACANTIA. Goods in which no one can claim a property but the king; such as royal fish, shipwrecks, treasure trove, waifs, strays, &c.—1 *Bl.* 298, 299.

BONAGHT or BONAGHTY. An exaction in Ireland, imposed at the will of the lord, for relief of the knights called *bonaghti*, who served in the wars. Camden in his *Brit.* tit. *Desmond*, says, that James Earl of Desmond imposed upon the people these most grievous tributes of coin, livery, cocherings, *bonaghty*, &c.

BOND. A *bond or obligation* is a deed whereby a person binds or obliges himself, his heirs, executors, and administrators, to pay a sum of money, or to do any other act within a certain time. The person who enters into a bond, and thus binds or obliges himself to do a certain act, is termed the *obligor*; and the terms of a bond are generally such that the *obligor* must either perform the act specified therein, or submit to pay a *penalty* for non-performance of it;

the amount of which penalty is always specified in the bond. There is usually, also, added what is termed a *condition*, which is simply a statement of the conditions which the obligor subjects himself to in the bond to which it is annexed. A bond is *sealed* the same as any other deed of importance, and hence it is called a *specialty*, meaning an instrument of *special* or peculiar importance.

BOND POST OBIT. A bond, the terms of which are to be performed *after the death* of a person therein named.

BOND TENANTS. Copyholders and customary tenants are sometimes so called.—2 *Bl.* 148.

BONO ET MALO. Special writs of gaol delivery, which it was formerly the course to issue for each particular prisoner, were termed writs *de bono et malo*.—4 *Bl.* 270.

BONIS NON AMOVENDIS. A writ directed to the sheriffs of London, &c., to charge them, that one condemned by judgment in an action, and prosecuting a writ of error, be not suffered to remove his goods until the cause of error be tried.—*Reg. Orig. fo.* 131.

BOOK-LAND. See *Bock-land.*

BOOK OF RATES. A small book declaring the value of goods that pay poundage, and the duties of customs, &c.—1 *Bl.* 317.

BOOTING or BOTING CORN. Certain rent-corn anciently so called. The tenants in the manor of H. in *Com. B.* heretofore paid the *booting corn* to the prior of Rochester.—*Cowel.*

BOON DAYS or DUE DAYS. A certain number of days in the year in which the tenants of copyhold lands performed base or corporal services for their lord, as ploughing, reaping, &c.—*Scriven on Cop.*, 2, 413, *as cited in Wishaw.*

BORDAGIUM. The tenure of *Bordlands;* it was a sort of tenure which subjected a man to the meanest services; not being able even to sell his house without leave of the lord.—*Cowel.*

BORD-HALFPENNY (Sax. *bord* and *halfpenny*). Money paid to the lord of the town in fairs and markets, for the liberty of setting up tables, boards and stalls, for sale of wares.—*Cowel.*

BORDLANDS. The lands which lords kept in their own hands for the maintenance of their *board* or table. *Cowel.*

BORDLODE. The quantity of food or provisions which the *bordarii* or *bord-men* payed for their *bord-lands.* It was also a service required of the tenant to carry timber out of the woods of the lord to his house.—*Cowel.*

BORD-SERVICE. A tenure of bordlands; by which some lands in the manor of Fulham, in the county of Middlesex, and elsewhere, are held of the bishop of London.—*Cowel.*

BORG-BRIGCH, or BURGH-BRYCH. The breach or violation of suretyship, or pledge of mutual fidelity.

BOROUGH (Lat. *burgus*, Fr. *burg*). Borough, or burgh, signifies an ancient corporate town that sends members to parliament, and at the same time is not a city. Skene says that *burg* or *burgh*, whence we take our *borough*, metaphorically signifies a town having a wall or some kind of enclosure. All places that in old time had amongst our ancestors the

name of *borough* were one way or other fenced or fortified.—1 *Bl.* 115.

BOROUGH - HOLDER, or borsholders, or burseholders. — See tit. *Headborough.*

BOROUGH-ENGLISH (Sax. *borhoe englise*). The custom which prevails in certain ancient boroughs and copyhold manors, of lands descending to the youngest son instead of to the eldest. The reason of this custom seems to be, that in these boroughs people chiefly maintain and support themselves by trade and industry; and the elder children, being provided for out of their father's goods, and introduced into his trade in his lifetime, were able to subsist of themselves without any land provision, and therefore the lands descend to the youngest son, he being in most danger of being left destitute. It is called borough English, because, as some hold, it first prevailed in *England.*—1 *Bl.* 75.

BOROUGH-HEAD. See tit. *Headborough.*

BORSHOLDERS. See tit. *Headborough.*

BOSCAGE (*boscagium*). It means that food which wood and trees yield to cattle; from the Ital. *bosco, sylva.* To be quit *de boscagio*, means, says *Manwood*, to be discharged from paying any duty of wind-fall wood in the forest.—*Manwood.*

BOSCUS. An ancient word used in the law of England to signify all manner of wood.—*Blount.*

BOET. Compensation, recompense, satisfaction, or amends. Thence comes *manbote*, that is, compensation or amends for a man slain. —2 *Bl.* 35.

BOTELESS. In the charter of Hen. 1, to Thomas archbishop of York, it is said, that no judgment, or sum of money, shall acquit him that commits sacrilege; but he is in English called *boteless*, i. e. without emendation.—*Cowel.*

BOTHAGIUM. Boothage or customary dues paid to the lord of the manor or soil, for the pitching and standing of booths in a market or fair.—*Cowel.*

BOTTOMRY. Is in the nature of a mortgage of a ship, when the owner takes up money to enable him to carry on his voyage, and pledges the keel or *bottom* of the ship (*partem pro toto*), as a security for the repayment. In which case it is understood, that if the ship be lost, the lender loses also his whole money; but, if it return in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest. And this is allowed to be a valid contract in all trading nations, for the benefit of commerce, and by reason of the extraordinary hazard run by the lender; and in this case, the ship and tackle, if brought home, are answerable (as well as the person of the borrower) for money lent.—*Park on Insurance.*

BOUCHE OF COURT, or, as it is commonly called, *budge of court*, was a certain allowance of provision from the king to his knights and servants that attended him in any military expedition. The French *avoir bouche à la cour* means to have an allowance at court of meat and drink; but sometimes it is only extended to bread, beer, and wine, and this was anciently in use, as well in the houses of noblemen as in the king's *court.*—*Cowel.*

BOUND BAILIFFS. Sheriff's offi-

cers, who serve writs, make arrests, &c. The sheriff being answerable for the misdemeanors of these bailiffs, they are therefore usually *bound* in an obligation with sureties for the due execution of their office, and are thence called *bound bailiffs*. — 1 *Bl.* 345, 346.

BOW-BEARER. An under officer of the forest, whose duty it is to oversee and make inquisition in every bailiwick of the forest of all manner of trespasses committed either against vert or venison; and to attach or cause such trespassers to be attached in the next court of attachment, there to be presented. — *Cromp. Jurisd. fol.* 201; *Cowel.*

BREACH. The breaking or violating of any thing, either by commission or omission; thus *breach of close* is the unlawful entry on another person's soil or land, or close; *breach of covenant* is the non-performance of any covenant agreed *to be* performed, or the doing of any act covenanted *not to be* done; *breach of duty*, the breaking or violating any duty; *breach of peace*, the breaking or disturbing of public peace; *breach of pound*, the breaking any pound or place where cattle or goods are deposited; *breach of promise*, the breaking or non-performance of one's promise.

BREACH OF PRIVILEGE. A breach of privilege is a contempt of the high court of parliament, whether relating to the House of Lords or the House of Commons. Both branches of the legislature act on the same grounds, both declare what are and what are not breaches of their privileges, when the question is raised, and both punish, by commitment or otherwise, as the courts of law and equity do for contempt. Resistance to the officers of the houses of parliament has in almost all cases been treated as a breach of the privileges of parliament. The presence of strangers is a breach of privilege, though permitted on sufferance; and formerly, to take a note of any of the proceedings was a high act of contempt, although now the representatives of the newspaper press are not only allowed to be present for that purpose, but have a gallery to themselves in each house, and every accommodation afforded them which the courtesy of the chief officers of both can render.

BREAKING A CLOSE. The unlawful entry on another person's soil or land.

BRECCA (from the Fr. *breche*). A breach or decay, or any other want of repair. — *Cowel.*

BREDE, signifies broad. *Bracton* uses this word thus, too large and too *brede*, i. e. too long and too broad. It is also a Saxon word, signifying *deceit*. — *Bracton.*

BREDWITE (Sax. *bread* and *wite*). The imposition of a fine or penalty or amerciament, for default in the assize of bread. — *Cunningham.*

BREHON. The judges and lawyers in Ireland were formerly called *brehons*; and thence the Irish law was called *brehon law*. — 1 *Bl.* 100.

BRENAGIUM. The payment in bran, which tenants formerly made to feed the lord's hounds. — *Cowel.*

BRETOYSE or BRETOISE. Britains or Welshmen. *Legem de Breytoyse* is supposed to signify *legem Marchiarum*, or the law of the Britains or Welshmen. — *Blount.*

BREVE. Any writ or precept from the king was called *Breve*, which we still retain in the name of *Brief*; the

king's letters patent to poor sufferers for collection.—*Cowel.*

BREVE PERQUIRERE. To purchase a writ or license of trial in the king's court by the plaintiff, *qui breve perquisivit.* Hence the usage of paying ten shillings where the debt was 100*l.* and so upwards, in suits of money due upon bond.—*Blount.*

BREVE DE RECTO. A writ of right, or license for a person ejected to sue for the possession of an estate detained from him.—*Cowel.*

BREVIATES OF BILLS. A breviate of a bill in parliament is an epitome of its contents. In compliance with an order of the House of Commons, made in 1651, with every bill which is printed a breviate of its provisions is also prepared and printed, in order that such provisions may be ascertained without the trouble of reading the bill itself *in extenso.*

BREVIA TESTATA. Sort of deeds or memorandums made use of by our feudal ancestors, after *verbal* grants had given rise to disputes and uncertainties.—2 *Bl.* 307.

BREVIBUS ET ROTULIS LIBERANDIS. A writ or mandate to a sheriff, to deliver unto the new sheriff, chosen in his room, the county, with the appurtenances, *una cum rotulis brevibus,* and other things belonging to that office.—*Reg. Orig. fol.* 295, *a.*

BRIBERY. The crime of offering any undue reward or remuneration to any public officer of the crown with a view to influence his behaviour. The taking such reward is as much bribery as the offering it. It also sometimes signifies the taking or giving a reward for public offence. The offence is not confined, as some have supposed, to *judicial* officers.—4 *Bl.* 140, *and Chitty's note thereon.*

BRIBOUR or BRIBER (from the Fr. *bribeur*). Seems, in its legal signification, to mean a man who pilfers other men's goods, as clothes out of a window or the like.—*Stat. Ed.* 2, *cap.* 1.

BRIEF (*brevis*). An abridgement of a plaintiff's or a defendant's case written out for the instruction of counsel on a trial at law. When a plaintiff in an action has made up his mind to try it, he must prepare his *briefs* and evidence. The *brief* contains a statement of the proceedings in the action (called the pleadings), a brief history of the cause of the action, and the evidence that he has to support it; and this is delivered to the counsel whom the party intends to employ.—*Smith's Action at Law,* 73.

BRIEF A L'EVESQUE. The name of a writ directed to a bishop which in *quare impedit* shall go to remove an incumbent, unless he recover or be presented *pendente lite.*—1 *Keb.* 386; *Tomlins.*

BRIGBOTE or BRUGBOTE (from *brig* a bridge, and *bote* a compensation or amends). To be freed from the reparation of bridges.—*Cowel.*

BROKER. See tit. *Factor and Broker.*

BUDGET (from the Fr. *bougette*). The general financial statement, annually made by the chancellor of the exchequer in the house of commons, is so termed. It usually embraces a review of the income and expenditure of the last year, as compared with those of preceding years; remarks upon the financial prospects of the country; an exposition of the intended repeal, modification or impo-

sition of taxes during the session; a detail of the current expenditure during the current period, with its grounds of justification; an account of all operations relating to the national debt, and finally the excess of income over expenditure, or vice versâ as the case may be, accompanied by such observations as the occasion may seem to require.—*Dodd's Parl. Comp.* 70; *May's Treat. of Parl.* 331.

BUGGERY or SODOMY (from the Italian *bugarone*). A carnal copulation against nature; and this of the species, as a man or woman with any animal; or of sexes, as a man with a man, or a man unnaturally with a woman. This infamous crime is said to have been introduced into England by the Lombards.—3 *Inst.* 58.

BURGAGE TENURE. Tenure in *burgage* is described by Glanvil, and is expressly laid down by Littleton, to be but tenure in socage: and it is where the king or other person is lord of an ancient borough, in which the tenements are held by a rent certain. It is, indeed, only a kind of town socage; as common socage, by which other lands are holden, is usually of a rural nature. A borough is usually distinguished from other towns, by the right of sending members to parliament; and where the right of election is by burgage tenure, that alone is a proof of the antiquity of the borough. It is therefore a tenure proper to boroughs, whereby the inhabitants by ancient custom hold their lands or tenements of the king, or other lord of the borough, at a certain yearly rent.—2 *Bl.* 82.

BURG. See tit. *Borough.*

BURG-BOTE (from *burg*, i. e. *castellum*, and *bote*, i. e. *compensatio*). A tribute or contribution towards the building or repairing of castles or walls of defence; or towards the building of a borough or city.—*Cowel.*

BURGESSES (*burgarii*). Properly the inhabitants or persons in trade within a borough; but now those are usually called *burgesses* who serve in parliament for any such borough or corporation.—1 *Bl.* 174.

BURGH-BRECHE (*fidejussionis violatio*, i. e. a breach of pledge). A fine imposed on the community of a town for a breach of the peace.—*Leg. Canute, cap.* 55.

BURGHBRISTHE or BURGBERICHE, as used in *Domesday*, signifies a breach of the peace in a city.—*Cowel.*

BURGLARY (*burgi latrocinium*). The breaking and entering into a house or dwelling of another in the night, with the *intention* of committing a felony.—4 *Bl.* 223.

BURGHMOTE. The court of a borough.—*Cowel.*

BURGHWARL. A burgess or citizen.—*Cowel.*

BURSHOLDERS. See tit. *Headborough.*

BY-LAWS. Private laws or statutes made for the government of any corporation, which are binding upon themselves, unless contrary to the laws of the land, and then they are void. The laws which regulate the internal government of our universities are *by-laws*.—1 *Bl.* 475.

BY STATUTE. This phrase is frequently used in contradistinction to the phrase "at common law," meaning by *express parliamentary enactment* as distinguished from the common law of the land. Thus, a man has sometimes two remedies for the

same injury, either of which he may pursue; one provided by the express enactment of the legislature, the other by the common law of the land, in which case he would be said either to pursue the remedy given him *by statute*, or that which lay for him *at common law*.

BYE THE BYE, *Declaring*. Declaring against a defendant before any writ or process to compel his appearance in court had been issued against him. This was formerly allowed when a defendant was already in court, either at the suit of the same plaintiff in another action, or at the suit of some other party. This mode of declaring was grounded upon the principle that the defendant being already in court, any further process to compel his appearance was unnecessary.—1 *Sellon's Pr.* 223, 228, *2nd ed.*

BYRLAWS or BIRLAWS. According to Skent *leges rusticorum*, laws made by husbandmen or townships concerning neighbourhood amongst themselves.—*Cowel.*

C.

CABINET. The leading members of the executive government of the country constitute a board by themselves, apart from the general body of the Queen's ministers or Privy Council. The board so formed is called the "cabinet," and its meetings "cabinet councils."—2 *Stephen's Bl.* 480.

CABLISH (*cablicium*). A word used by the writers on the forest laws to signify *brush-wood* or *browse-wood*. But according to Spelman, it more properly signifies *windfaln-wood*, it being written of old *cadibulum*, from *cadere*. —*Cromp. Jurisd ; Spelman.*

CACHEPOLLUS. A pursevant, bailiff, or catchpole.—*Cowel.*

CACHERILLUS. An inferior bailiff.—*Cowel.*

CAEP GILDUM. The restoring of goods or cattle.—*Cowel.*

CALANGIUM and CALANGIA. Challenge, claim, or dispute.—*Blount.*

CALEFAGIUM. A right to take fuel yearly.—*Cowel.*

CALENDAR OF PRISONERS. A list of all the prisoners' names, with their several judgments in the margin, in the custody of each respective sheriff.—4 *Bl.* 403.

CALL. See tit. *Calling to the Bar.*

CALL DAY. The day appointed by the benchers of the respective inns of court for calling members to the bar is so termed.

CALLING THE PLAINTIFF. It is usual for a plaintiff when he or his counsel perceives that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or to withdraw himself; whereupon the crier is ordered to *call the plaintiff*; and if neither he nor any body for him appears, he is nonsuited, the jurors are discharged, the action is at an end, and the defendant shall recover his costs. The phrase is synonymous with *nonsuiting the plaintiff*. —3 *Bl.* 376. See the phrase used in 3 *Car. & P.* 351 ; 1 *Car. & Marsh.* 363.

CALLING TO THE BAR. Conferring the dignity or degree of a barrister at law upon a member of one of the inns of court is so termed.

CALL OF THE HOUSE. A call of the House, either in the Lords or Commons, is a course resorted to by

parliament on the occurrence of business of more than ordinary importance; and it is competent to any member who may have a motion coming on upon a certain day, and is desirous of a full attendance, to give notice of his intention to move that the house be called over. If on the day in question any member do not attend in his place, he is sent for in custody of the serjeant-at-arms, and is liable to commitment and the consequent fines, unless he make some good excuse for his absence.

CAMERA (from the old German *cam, cammer*, crooked). It formerly signified any winding or crooked piece of ground; but afterwards the word was used for any vaulted or arched building; and in Latin law proceedings for judges' chambers.—*Cowel.*

CAMPUS MAII or MARTII. An assembly held every year upon May day, where the members confederated together to defend the kingdom against enemies.—*Blount.*

CANFARA. A trial by hot iron, formerly used in this kingdom.—*Cowel.*

CANON. A law, rule, or ordinance.

CANON LAW. It consists partly of certain rules taken out of the scripture; partly of the writings of the ancient fathers of our church; partly of the ordinances of the general and provincial councils; and partly of the decrees of the popes in former ages.—*Cunningham.*

CANONRY. An ecclesiastical benefice attaching to the office of *canon*. It is only capable of being held by a person in priest's orders, but no cure of souls belongs to it. It is not the proper subject-matter of ejectment. —1 *M. & G.* 625.

CANONS OF INHERITANCE. The legal rules by which inheritances are regulated.—2 *Bl.* 208.

CANTRED or CANTREF (from *cant*, i. e. a hundred, and *tret*, a town or village). A hundred villages. In Wales the counties are divided into *cantreds*, as in England into hundreds.—*Cowel.*

CAPACITY. The ability which a man or body politic has to give or take lands or other things, or to bring actions.—2 *Bl.* 290.

CAPE. A writ used in the action of dower, and so called from the word *cape*, with which the writ commences. It is divided into *cape magnum* or *grand* cape, and *cape parvum* or *petit* cape. The writ of grand cape directs the sheriff to *take* into his possession, by the view of an inquest, a third of the lands, for the tenant's default in not appearing to the action, and then to summon the tenant to appear in court at Westminster to account for his prior nonappearances. The distinction between *grand* and *petit* capes is this; that the former never lies after an appearance by the tenant in chief, while the latter issues after the tenant has appeared, and makes default in any term *subsequent* to his appearance.—1 *Rop. Husb. and Wife*, 431, 433.

CAPE AD VALENTIAM. A species of *cape magnum*, and lies when I am impleaded of certain lands and I vouch to warrant another against whom a summons *ad warrantizandum* has been awarded and he comes not at the day given; then, if the demandant recover against me, I shall have this writ against the vouchee, and shall recover so much in value of the land of the vouchee if he has so much; and, if he has not so much, then I shall have execution of such lands and tenements as descend to

him in fee simple; or, if he purchase afterwards, I shall have against him a re-summons; and if he can say nothing, I shall recover the value. This writ lies before appearance.—*Cowel.*

CAPIAS. By the 2 William 4, c. 39, called the Uniformity of Process Act, it was enacted, that in the commencement of all personal actions where the plaintiff intended to arrest the defendant and hold him to bail, it should be done by a writ of *capias.* This is a writ directed to the sheriff of the county wherein the defendant resides, commanding him to *take* the defendant, and safely keep him until he shall have given bail, or made a deposit of the amount for which he was arrested, together with such further charges as the law prescribes, &c. The writ of *capias* however is now no longer used for *commencing* an action; for by the 1 & 2 Vict. c. 110, being the act for abolishing arrest for debt, it is enacted (sec. 2) that all personal actions in her Majesty's superior courts of law at Westminster shall be commenced by writ of summons. This act, after reciting that the present power of arrest is unnecessarily extensive and severe, enacts that the plaintiff, previously to arresting the defendant upon a writ of *capias,* shall show to the satisfaction of one of the judges that he has good cause for making such an arrest, as by showing that unless he is immediately apprehended he will quit the kingdom, &c.; a writ of *capias* therefore is now only resorted to after the action has been actually commenced by a writ of summons.

CAPIAS AD AUDIENDUM JUDICIUM. In case a defendant be found guilty of a misdemeanor (the trial of which may, and usually does happen in his absence) a writ, so called, is awarded and issued, to bring him to receive his judgment.—4 *Bl.* 375.

CAPIAS AD RESPONDENDUM. A writ formerly in use, where an original was sued out, &c. to take the defendant and make him answer the plaintiff.—3 *Bl.* 281.

CAPIAS AD SATISFACIENDUM, (in practice frequently called shortly a Ca. Sa.) A writ of execution which a plaintiff takes out after having recovered judgment against the defendant; it is directed to the sheriff and commands him to take the defendant and safely keep him in order that he may have his body at Westminster on a day mentioned in the writ to make the plaintiff satisfaction for his demand.—3 *Bl.* 415.

CAPIAS CUM PROCLAMATIONE. When a plaintiff is desirous of proceeding to outlawry against a defendant after the "distringas" has been returned "non est inventus" and "nulla bona," he may sue out a writ of exigent, and with it a writ of "*proclamation.*" By this latter writ, which recites the writ of exigent, the sheriff is commanded to *proclaim* the defendant on three several days, according to the form of the statute, that he may render himself, &c. By stat. 31 Eliz. c. 3, s. 1, one of these proclamations must be at the county court or hustings, one at the general quarter sessions, and one other shall be made one month at least before the *quinto exactus* on a Sunday, by affixing the same on the church or chapel doors of the defendant's parish. Upon the return of the writs of exigent and proclamation, the capias utlagatum will be issued.—1 *Arch. Pr.* 121, 122.

CAPIAS PRO FINE. Formerly when judgment was given for a plaintiff in an action it was considered that the defendant should be either amerced for his wilful delay of justice in not immediately obeying the king's writ by rendering to the plaintiff his due,

or be taken up, *capiatur*, till he paid a fine to the king for the public misdemeanor which was considered to be coupled with the private injury in such a case.—3 *Bl.* 398.

CAPIAS UTLAGATUM. A writ that is used for the purpose of arresting a man who has been outlawed; it is directed to the sheriff, and commands him to apprehend the person outlawed for not appearing, and to keep him in safe custody until the day mentioned in the writ, in order that he may be presented before the court to be dealt with for his contempt.—3 *Bl.* 284.

CAPIAS IN WITHERNAM. A writ which lies where a distress taken is driven out of the county, so that the sheriff cannot make deliverance in replevin, commanding the sheriff to take as many beasts of the distrainer, &c.—*Tomlins.*

CAPIATUR. See *Capias pro Fine.*

CAPITA (distribution *per*). In the distribution of the personal estate of a person dying intestate the claimants, or the persons who by law are entitled to such personal estate, are said to take *per capita* when they claim in their own rights as in equal degree of kindred, in contradistinction to claiming by right of representation, or *per stirpes*, as it is termed. As if the next of kin be the intestate's three brothers A B and C; here his effects are divided into three equal portions and distributed *per capita*, one to each: but if A (one of these brothers) had been dead and had left three children, and B (another of these brothers) had been dead and had left two; then the distribution would have been by representation, or *per stirpes* as it is termed, and one third of the property would have gone to A's three children, another third to B's two children, and the remaining third to C, the surviving brother.—2 *Bl.* 517.

CAPITA (succession *per*). When the claimants are the next in degree to the ancestor in their *own* right and not by right of *representation*. And see the last title.—2 *Bl.* 218.

CAPITAL. The punishment of death is frequently termed *capital* punishment; and those offences are called *capital offences* for which death is the penalty allotted by law. The use of the term may probably have arisen from the *decapitation* which in former times was a common mode of executing the sentence of death, and which is prescribed in some of the statutes against traitors even now remaining in force. The extreme sentence of the law, however, has for many years been carried into effect against all offenders by hanging them by the neck. The offences which are still capital offences have by the humane spirit of modern legislation been recently much diminished, and now only include high treason, murder, rape, and unnatural offences, setting fire to any king's ship or stores, the causing injury to life with intent to commit murder, burglary accompanied with an attempt at murder, robbery accompanied with stabbing or wounding, setting fire to a dwellinghouse any person being therein, setting fire to or otherwise destroying ships with intent to murder any person, exhibiting false lights with intent to bring ships into danger, piracy accompanied by stabbing, riotous destruction of buildings.—1 *Stewart's Bl.* 128, *n.* (*k*).

CAPITALE. A thing which is stolen, or the value of it.

CAPITE (from *caput*, a head or king; unde tenere in *capite*, est tenere de rege, omnium terrarum *capite*). All tenures were either derived or supposed to be derived from the

king as lord paramount; such as were held immediately under him in right of his crown and dignity were called his tenants *in capite* or in chief; and the tenure by which they held was called *tenure in capite*.—2 *Bl.* 59, 60.

CAPITILITIUM. Poll money.—*Blount.*

CAPITULA RURALIA. Clerical assemblies or chapters held by the rural dean and parochial clergy within the precinct of every distinct deanery; at first every three weeks, then once a month, and more solemnly once a quarter.—*Paroch. Antiq.* 640; *Cowel.*

CAPTION (*captio*). This word has several significations. When used with reference to an indictment it signifies the style or preamble or commencement of the indictment; as used in reference to a commission it signifies the certificate to which the commissioners' names are subscribed, declaring when and where it was executed. The act of arresting a man is also termed a caption.—*Burn's Just. tit. Indictment; Cunningham.*

CAPTURE (*captura*). An arrest, or seizure; but is applied more particularly to prizes taken by privateers in time of war, which are divided between the captors.—*Cunningham;* 2 *Stephen's Bl.* 80.

CAPUTAGIUM. Some define it to be head or poll money, or the payment of it; others say it is the same as *chevagium.*—*Cowel.*

CAPUT BARONIÆ. The castle or chief seat of a nobleman, which, if there be no son, must not be divided amongst the daughters as in the case of lands, but descends to the eldest daughter.—*Cowel.*

CAPUT JEJUNII. Used in our records for Ash Wednesday, being the head, beginning, or first day of the Lent fast.—*Paroch. Antiq.* 132; *Cowel.*

CAPUT LUPINUM. Formerly an outlawed felon was said to have *caput lupinum* (*the head of a wolf*), and might, like that animal, be knocked on the head by any one who might meet him.—*Cowel.*

CARCAN. By some defined to be a pillory.—*Cowel.*

CAROOME. Would seem to signify a licence granted by the lord mayor of London to keep a cart.—*Com. Dig. Biens, (B.);* 2 *Vern.* 83.

CARRIER. A common carrier is one who undertakes to transport from place to place for hire the goods of such persons as think fit to employ him. Such is a proprietor of waggons, barges, lighters, merchant ships, or other instruments for the public conveyance of goods.—1 *Smith's L. C. in notes to Coggs* v. *Bernard,* 101. A person who conveys passengers *only* is not a common carrier.—*Aston* v. *Heaven,* 2 *Esp.* 533; *Christie* v. *Griggs,* 2 *Camp.* 79.

CARRYING COSTS. A verdict is said to *carry costs* when the party for whom the verdict is given becomes entitled to the payment of his costs as incident to such verdict. Where the damages given by a verdict are under forty shillings, the party obtaining such verdict is usually not entitled to his costs, and such a verdict is therefore said not to carry costs.

CARTA DE FORESTA. A charter of the forest (confirmed in parliament 9th Hen. 3), by which many forests unlawfully made, or at least many precincts added by unlawful encroachments, were *disafforested.*—2 *Stephen's Bl.* 19; 3 *Hallam's Mid. Ag.* 222; 1 *Reeves,* 254. See tit. *Charta.*

proving a will, or granting administration, a suit usually follows to determine either the validity of the testament, or who has a right to administer. This claim or obstruction by the adverse party is an injury to the party entitled, and as such is remedied by the sentence of the spiritual court, either by establishing the will or granting the administration.—3 *Bl.* 98, 246.

CAVEAT EMPTOR (*let the buyer beware*). A maxim of law applicable to the sale of goods and chattels, under the authority of which a vendor is not bound to answer for the goodness of the wares he sells, unless he expressly *warrants* them to be sound and good, or unless he knew them to be otherwise, and hath used any art to disguise them; and this is so although the price was such as is usually given for a sound commodity. Every affirmation, however, at the time of sale, is a *warranty*, if it appears to have been so intended.—2 *Stephen's Bl.* 126; 1 *Smith's L. C.* 78.

CAVERS. The miners in Derbyshire who are given to pilfering and stealing, and such like crimes, are so termed.—*Cunningham.*

CAYAGIUM. A duty or toll paid to the king for landing goods at some quay or wharf.—*Cowel.*

CENEGILD. A mulct or fine paid by one who kills another to the relatives of the deceased, by way of expiation.—*Spelman.*

CENNINGA. Notice given by a buyer to a seller that the thing sold was claimed by another, in order that he might appear to justify the sale.—*Cowel.*

CENSUALES. Those persons who, to procure the protection of the church, bound themselves to pay an annual tax or quit rent out of their estates to a church or monastery. A species of the *oblati.*—*Rob. Cha. V.*; *Tomlins.*

CENSUMORTHIDUS. A dead rent; the same as what we call mortmain.—*Cowel.*

CENSURE (Lat. *census*). Is a custom which prevails in divers manors in Cornwall and Devon, of calling all residents therein above the age of sixteen years to swear fealty to the lord, to pay 11*d. per poll*, and 1*d. per ann.* ever after as *cert-money* or *common fine*, and these thus sworn were called censors.—*Survey of the Duchy of Cornwall*; *Cunningham.*

CENTENARII. Officers, petty judges, or bailiffs, who exercised their jurisdiction over ten *tithings* or a *hundred.*—1 *Bl.* 115, 116.

CEPI CORPUS. When a writ of capias is directed to the sheriff to execute, he is commanded to return it within a certain time, together with the manner in which he has executed it; if the sheriff has taken the defendant, and has him in custody, he returns the writ, together with an indorsement on the back, stating that he has taken him, which is technically called a return of *cepi corpus.*—3 *Bl.* 288.

CERTAINTY, *in Pleading.* The word is used in pleading in the two different senses of distinctness and particularity. When in pleading it is said that the issue must be *certain*, it means that it must be *particular* or *specific*, as opposed to undue generality.—*Steph. Pl.* 143. See also *Rex* v. *Horne*, *Cowp.* 682.

CERTIFICANDO DE RECOGNITIONE STAPULÆ. A writ formerly in use directed to the mayor of the *staple*, commanding him to certify to

the Lord Chancellor a statute staple taken before him in a case where the party himself detained it, and refused to bring it in. — *Reg. Orig.* 152; *Cowel.*

CERTIFICATE, *Trial by.* A trial now little in use, and is resorted to in cases where the fact in issue lies out of the cognizance of the court, and the judges, in order to determine the question, are obliged to rely on the solemn averment or information of persons in such a station as affords them the clearest and most competent knowledge of the truth. Thus, when a custom of the city of London is in issue, such custom is tried by the certificate of the mayor and aldermen, certified by the mouth of their recorder; so in the action of dower, when the tenant pleads in bar that the demandant was never *accoupled* to her alleged husband in *lawful matrimony*, and issue be joined upon this, the court awards that it be tried by the diocesan of the place where the parish church in which the marriage is alleged to have been had is situate, and that the result be certified to them by the ordinary at a given day.—3 *Bl.* 333; *Steph. on Pl.* 112, 113; *Co. Litt.* 74.

CERTIFICATION OF ASSISE OF NOVEL DISSEISIN (*certificatio assisæ novæ disseisinæ*). A writ which was formerly in use, and was granted for the re-examination or review of a matter passed by *assise* before any justices. It was directed to the sheriff, and called both the party for whom the *assise* passed, and the jury that was impanelled upon the same, before the said justices at a certain day and p'ace.—*Bract. lib.* 4, *c.* 19; *Horne's Mirror of Just. lib.* 3; *Cowel.*

CERTIORARI. An original writ, issuing sometimes out of the Court of King's Bench and sometimes out of Chancery. It is usually resorted to shortly before the trial, to *certify* and remove any matter or cause, with all the proceedings thereon, from some inferior court into the Court of King's Bench, when it is surmised that a partial or insufficient trial will probably be had in the court below. —4 *Vin. Abr.* 329; 4 *Bl.* 320.

CERT-MONEY. Head money, or a common fine paid annually by the resiants of several manors to the lords thereof, *pro certo letæ*, for the certain keeping of the *leet*; and sometimes to the hundred, as is the case with the manor of Hook, in Dorsetshire, which pays *cert-money* to the hundred of Egerton. In ancient records this is called *certum letæ.*—*Cowel.*

CERVISARII. Certain tenants were so called among the Saxons, who were liable to the payment of a duty called *drinclean*; it is said they were so called from *cervisia*, ale, that being their chief drink.—*Cowel.*

CESSAT EXECUTIO. The suspending or stopping of execution. If in an action of trespass against two persons judgment be given against one, and the plaintiff takes out execution against him, the writ will abate as to the other, because there must be a *cessat executio* until it is tried against the other defendant.—*Toml.*

CESSAVIT. A writ that formerly lay in various cases. It was generally sued out against a person for having neglected for two years performing such service or paying such rent as he was bound to by his tenure, and at the same time had not upon his premises sufficient goods or cattle to be distrained.—*Cowel.* It also lay where a religious house had lands given it on condition of performing some certain spiritual service, as reading prayers, giving alms, and neglected it; and in either of the above cases, if the *cesser* or neg-

lect had continued for two years, the lord or donor and his heirs had a writ of *cessavit* to recover the land itself, *eo quod tenens in faciendis servitiis per biennium jam cessavit.*—3 *Bl.* 231.

CESSE. In 22 Hen. 8, c. 3, it seems to signify an assessment or tax.—*Cunningham.*

CESSER. The act of ceasing, giving over, finishing, or departing from, &c.

CESSIO BONORUM. The yielding up or ceding of goods or property. The law of *cession* introduced by the Christian emperors, provided that if a debtor *ceded* or yielded up all his fortune to his creditors, he should be secured from being dragged to a gaol, "*omni quoque corporali cruciatu semoto.*"—2 *Bl.* 473.

CESSION. Ceding or yielding up. By stat. 21 Hen. 8, c. 13, if any one having a benefice of 8*l. per annum* or upwards, according to the then present valuation in the king's books, accepts any other, the first shall be adjudged void unless he obtains a dispensation, which no one is entitled to have but the chaplains of the king and others therein mentioned, the brethren and sons of lords and knights, and doctors and batchelors of divinity and law admitted by the universities of this realm; and a vacancy thus made, for want of a dispensation, is called *cession.*—1 *Bl.* 392.

CESSION, *Law of.* See tit. *Cessio Bonorum.*

CESSOR. He who neglects or ceases so long to perform a duty that he thereby incurs the danger of the law.—*Old Nat. Brev.; Cowel.*

CESSURE or CESSER. The act of ceasing, giving over, finishing, or departing from, &c.

CESTUI QUE TRUST. He for whose use or benefit another is invested or seised of lands or tenements; or in other words, he who is the real, substantial, and beneficial owner of lands which are held in trust.—See 1 *Cruise's Dig.* 411; *Tay, Law Gloss.*

CESTUI QUE USE. He for whose use lands or tenements are held by another.—2 *Bl.* 328.

CESTUI QUE VIE. He for whose life lands or tenements are granted. Thus, if A. grants lands to B. during the life of C., here C. is termed the *cestui que vie.*—2 *Bl.* 123.

CHACEA. The road or way through which cattle are driven to pasture, in some places called a droveway. It is also sometimes used for a *chase* or station of game more extended than a park, and yet less than a forest. It also sometimes means the liberty of *chasing* or hunting within such district.—*Cartular. Abbat. Glaston. MS. fol.* 70; *Cowel.*

CHAFEWAX. An officer in chancery, who fits the wax for the sealing of writs and other instruments.—*Cowel.*

CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE. At the commencement of every new parliament, each of the two Houses respectively selects from its own body a member to preside over its proceedings whilst the House is in committee. The officer so appointed is called "The Chairman of Committees of the whole House," and exercises the same authority in a committee of the whole House as does the Speaker on ordinary occasions.

CHALKING. An impost so called. It is thus used. The merchants of the staple require to be eased of divers new impositions, as *chalking*, ironage, wharfage, &c.—*Rot. Parl.* 50 *Edw.* 3; *Cowel.*

CHALLENGE (Fr. *chalenger*). An exception taken either against persons or things. *Persons*, as jurors, either one or more of them; *things*, as a declaration, &c. There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it stands *arrayed* in the *panel*, or little square *pane* of parchment on which the jurors' names are written; or to the *polls*, by which is meant the several particular persons or *heads* in the array.—*Tomlins.* A challenge to the array is at once an exception to the whole panel, in which the jury are arrayed; and it may be made upon account of partiality, or some default in the sheriff or his under officer, who arrayed the panel; as where the panel was arrayed at the nomination or under the direction of either the plaintiff or defendant in the cause, &c. this would be a good ground for a *challenge to the array*. *Challenges to the polls* are exceptions to *particular* jurors; and seem to answer the *recusatio judiciis* in the civil and canon laws. Challenges to the polls of the jury (who are judges of fact) are by Sir Edward Coke reduced to four heads: viz. *propter honoris respectum; propter defectum; propter affectum;* and *propter delictum.* —For further information on this head, see 3 *Bl.* 359 to 363.

CHAMBERLAIN (*camerarius*). A high officer of state. Various great officers are so called; as the Lord Great Chamberlain of England, Lord Chamberlain of the Household, Chamberlain of the Exchequer, &c. To the Lord Chamberlain the keys of Westminster Hall and the Court of Requests are delivered upon all solemn occasions. He disposes of the sword of state, to be carried before the king when he comes to the parliament, and goes on the right hand of the sword, next to the king's person. He has the care of providing all things in the House of Lords in the time of parliament. To him belongs livery and lodgings in the king's court, &c. and the gentleman usher of the black rod, yeoman usher, &c. are under his authority. There are two officers of this name in the king's exchequer, who were wont to keep a controlment of the *pells of receipt*, and *exits*, and certain keys of the treasury and records; they kept also the keys of that treasury where the leagues of the king's predecessors and divers ancient books, as *Domesday*, *Black Book of the Exchequer*, remain.—*Cunningham.*

CHAMBERS OF THE KING (*Regiæ cameræ*). The ports and harbours of our kingdom were formerly so called. —*Cowel.*

CHAMPARTY or CHAMPERTY. That species of maintenance which consists in the purchasing an interest in the thing in dispute, with the object of maintaining and taking part in the litigation.—2 *Inst.* 484, 562, 563; *Stanley* v. *Jones*, 7 *Bing.* 378; *Stevens* v. *Bagwell*, 15 *Ves. jun.* 139.

CHAMPERTER or CHAMPERTOR. He who is guilty of the offence of *champerty*. A bargainor, purchaser, or promoter of other persons' suits or actions at law.—4 *Bl.* 135. See last title.

CHAMPION. He who, in the trial by battle, fought either for the tenant or demandant.—3 *Bl.* 339. Those were also called *champions* who fought personally their own cause.—*Bract.*

CHAMPION OF THE KING (*campio regis*). An officer whose office it was at the coronation of our kings to ride into Westminster Hall armed *cap-à-pie*, when the king was at dinner there, and throw down his gauntlet by way of challenge, pronounced by a herald, that if any man shall deny or gainsay the king's title to the crown, he is there ready to defend it in single combat, &c.; which being done, the king drinks to him, and sends him a gilt cup, with a cover, full of wine, which the champion drinks, and has the cup for his fee.—*Cowel.*

CHANCELLOR (*Cancellarius*). There are many officers bearing this title; those however which it will be necessary to mention here, are, 1st. The *Lord Chancellor;* 2d, the *Chancellor of the Duchy of Lancaster;* 3d, the *Chancellor of a diocese;* 4th, the *Chancellor of the Exchequer.* The *Lord Chancellor* is the presiding judge in the Court of Chancery; he is created by the mere delivery of the king's great seal into his custody, whereby he becomes, without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedency to every temporal lord. He is a privy councillor by his office, and prolocutor of the House of Lords by prescription. To him belongs the appointment of all justices of the peace throughout the kingdom. Being formerly usually an ecclesiastic (for none else were then capable of an office so conversant in writings) and presiding over the royal chapel, he became keeper of the king's conscience, visitor in right of the king of all hospitals and colleges of the king's foundation, and patron of all the king's livings under the value of twenty marks *per annum* in the king's books. He is the general guardian of all infants, idiots, and lunatics; and has the general superintendence of all charitable uses in the kingdom. And all this over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the Court of Chancery. *The Chancellor of the Duchy of Lancaster* is the chief judge of the duchy court, who in difficult points of law is usually assisted by two judges of the common law to decide the matter in question. This court is held in Westminster Hall, and was formerly much used in relation to suits between tenants of duchy lands, and against accountants and others for the rents and profits of the said lands.—*Cunningham. The Chancellor of a Diocese* or *of a Bishop* is an officer appointed to hold the bishop's courts for him, and to assist him in matters of ecclesiastical law; who, as well as all other ecclesiastical officers, if lay or married, must be a doctor of the civil law, so created in some university.—1 *Bl.* 382. *The Chancellor of the Exchequer* is also a high officer of the crown, who sometimes sits in court and in the exchequer chamber; and, together with the regular judges of the court, sees that things are conducted to the king's benefit. His principal duties, however, are not of a judicial character, but concern the management of the royal revenue.—3 *Bl.* 44.

CHANCE-MEDLEY. The accidentally killing a man in self-defence is so termed; as if, in the course of a sudden broil or quarrel, I, in the endeavour to defend myself from the person who assaults me, accidentally kill him.—4 *Bl.* 184.

CHANCERY (*Cancellaria*). The *High Court of Chancery* is the highest court of judicature in this kingdom next to the parliament, and of a very ancient institution. The jurisdiction of this court is of two kinds—*ordinary* and *extraordinary.* The *ordinary* jurisdiction is that wherein the

lord chancellor, lord keeper, &c., in his proceedings and judgments, is bound to observe the order and method of the common law; and the *extraordinary* jurisdiction is that which this court exercises in cases of *equity*.

The *Ordinary Court* holds plea of recognizances acknowledged in the chancery, writs of *scire facias* for repeal of letters patent, writs of partition, &c., and also of all personal actions by or against any officer of the court; and, by acts of parliament, of several offences and causes. All original writs, commissions of bankruptcy, of charitable uses, and other commissions, as idiots, lunacy, &c., issue out of this court, for which it is always open; and sometimes a *supersedeas* or writ of privilege hath been here granted, to discharge a person out of prison. An *habeas corpus*, prohibition, &c. may be had from this court in the vacation, and here a *subpœna* may be had to force witnesses to appear in other courts, where they have no power to call them.—4 *Inst.* 79; 1 *Danv. Abr.* 776.

The *Extraordinary Court*, or Court of Equity, proceeds by the rules of equity and conscience, and moderates the rigour of the common law, considering the intention rather than the words of the law, equity being the correction of that wherein the law, by reason of its universality, is deficient. On this ground, therefore, to maintain a suit in chancery, it is always alleged that the plaintiff is incapable of obtaining relief at common law; and this must be without any fault of his own, as by having lost his bond, &c., chancery never acting *against*, but in assistance of the common law, supplying its deficiencies, not contradicting its rules. —*Tomlins*; 3 *Bl.* 47.

CHANGER. An officer belonging to the king's mint, mentioned in the statute of 2 Hen. 6, c. 12, where it is also written after the old way, *changour*, whose business was chiefly to exchange coin for bullion, brought in by merchants or others.—*Cowel.*

CHAPELRY (*capellaria*). The same thing to a chapel as a parish is to a church, i. e. the precinct and limits of it.—*Les Termes de la Ley*; *Cowel*; 6 *Jurist*, 608.

CHAPITERS or CHAPITRES (Lat. *capitala*, Fr. *chapitres*). In our ancient common law signify a summary of such matters as are to be inquired of or presented before justices in eyre, justices of assize or of peace, in their sessions. *Britton*, *cap.* 3, uses the word in this signification, and chapiters are now most commonly called *articles*, delivered by the mouth of the justice in his charge to the inquest; whereas in ancient times (as appears by *Bracton* and *Britton*), they were, after an exhortation given by the justices for the good observation of the laws and the king's peace, first read in open court, and then delivered in writing to the grand inquest for their better observance.—*Cowel.*

CHAPMAN. A dealer, a person who gains his livelihood by buying and selling.

CHAPTER. An assembly of clerks in a church cathedral, and in another signification, a place wherein the members of that community treat of their common affairs. It may be said that this collegiate company is termed chapter metaphorically, the word originally implying a little head; for this company or corporation is, as a head, not only to rule and govern the diocese in the vacation of the bishopric, but also in many things to advise the bishop when the see is full.—*Les Termes de la Ley.*

CHARGE and DISCHARGE. A charge is defined to be an act done,

binding on the party who does it; and a *discharge* is the undoing or removal of such charge. Lands are said to be charged when they are incumbered with any debt, rent, &c., as when they are conveyed to a mortgagee as security for the repayment of money by him advanced to the mortgagor. A *rent charge* is where a man grants a rent to issue out of certain lands, and with a condition that if the rent be behind, it shall be lawful for the grantee, his heirs, and assigns, to distrain for the same.—*Les Termes de la Ley.*

CHARGES. See tit. *Charging part of a Bill in Chancery.*

CHARGING *a Defendant in execution.* Taking him in execution; arresting him under the authority and by virtue of a writ of execution.

CHARGING PART *of a Bill in Chancery.* The plaintiff in a suit in equity, after setting forth the subject of complaint, adds such circumstances by way of allegation as are calculated to corroborate his statement, or to anticipate and controvert the claims of his adversary; and such allegations are technically called *charges*, and the part of the bill in which they occur is termed the *charging part of the bill.*

CHARTA. This word not only signifies an instrument or deed in writing, containing the evidence of things done between man and man, but also any signal or token by which some estates are held.—See *Magna Charta and Carta de Foresta.*

CHARTEL. When controversies in law used to be submitted to the decision of a trial by battel, a letter of challenge (called a *chartel*) used to be sent by one of the combatants to the other.—*Cowel.*

CHARTER (Fr. *chartres*). A written instrument containing the evidence of things done between man and man. This word bears the same meaning as the word *charta*. They have been divided by *Britton* into *charters of the king*, and *charters of private persons*; the former signifying those by which the king passes any grant to any person or persons, or body politic; the latter, simply deeds and instruments for the conveyance of lands from one party to another. For the meaning of the phrase *charter of affreightment*, see tit. *Charter-party.*—*Kitchin*, 114, 117; *Cowel.*

CHARTERER. A freeholder is so termed in Cheshire.—*Pet. Leg. Antiq.* 356. He who charters a vessel is also so termed.

CHARTER OF THE FOREST. A charter containing the laws of the forest; as the *charter of Canutus.*—*Fleta*; *Manwood*; *Cowel.* See also tit. *Carta de Foresta.*

CHARTER OF PARDON. That whereby a man is forgiven a felony, or other offence committed against the king.—*Cowel.*

CHARTER-LAND. Land held by charter, or written evidence; as freehold land is at the present day.—2 *Bl.* 90.

CHARTER-PARTY (Lat. *charta partita*, i. e. a deed or writing divided). An instrument commonly called among merchants and seafaring men a *pair of indentures*, and contains the covenants and agreements made between them concerning their merchandise and maritime affairs. *Charter parties* of affreightment settle agreements as to the cargo of ships, and bind the master to deliver the goods in good condition at the place of discharge, according to agreement.—2 *Inst.* 673; *Cunningham.*

CHARTIS REDDENDIS. A writ which formerly lay against him who had charters of feoffment delivered him to be kept, and refused to deliver them up again.—*Les Termes de la Ley.*

CHASE (Fr. *chasser*). This word has two significations in the common law. 1st, it signifies a driving of cattle to or from any place, as to *chase* a distress to a castle or fortlet. 2nd, it signifies a place for the reception of deer and wild beasts of the chase generally, as the buck, doe, fox, marten, and roe, &c. A *chase* is not the same as a forest, or a park, but is of a nature between the two, being commonly less than a forest, and not having so many liberties and privileges incident to it, and yet of larger extent than a park, and stored with a greater diversity of game, and having more keepers to superintend it. And it is said by *Crompton* in his *Jurisdiction*, 148, that a forest is no sooner in the hands of a *subject* than it loses its name, and at once becomes a *chase:* so that one of the essential differences between a forest and a *chase* is, that the former cannot be in the hands of a subject, and the latter may; and from a park, inasmuch as it is not inclosed, and has not only a larger compass and more game, but also a greater number of keepers and officers.—*Manwood's Forest Laws;* 4 *Inst.* 314; 2 *Bl.* 38.

CHATTELS or CATALS (*catalla*). All things which are usually comprehended under the name of goods come under the general name of *chattels*. *Chattels* are divided into two kinds, *real* and *personal*. *Chattels real* are such as concern real estates, or landed property, and are so called because they are interests issuing out of such kind of property; as the next presentation to a church, terms for years, estates by statute merchant, statute staple, *elegit*, &c. *Chattels personal* are generally such as are moveable and may be carried about the *person* of the owner wherever he pleases to go; such as money, jewels, garments, animals, household furniture, and almost every description of property of a moveable nature.—2 *Bl.* 385, 386. Things personal, however, are not confined to moveables; for as things real comprise not only the land itself, but such incorporeal rights as issue out of it, so things personal include not only those tangible subjects of property which are capable of locomotion, but also the incorporeal rights or interests which may grow out of or be incident to them. This class (to which may be assigned the term of *incorporeal chattels*) comprehends, among other species, *patent right*, or the exclusive privilege of selling and publishing particular contrivances of art, and *copyright*, or the exclusive privilege of selling and publishing particular works of literature.—2 *Stephen's Bl.* 72.

CHATTEL INTEREST. An interest, property, or estate in chattels, is so termed. It is more frequently applied to an interest or property in chattels *real*, as in terms for years, the right of presentation to a church, &c.

CHAUD-MEDLEY. The killing of a man in an affray in the *heat* of blood, and while under the influence of passion; and is thus distinguished from *chance-medley*, which is the killing a man in a *casual* affray in self-defence.—4 *Bl.* 184.

CHAUMPERT. A species of tenure mentioned in 35 *Ed.* 3.

CHAUNTRY. A church or chapel endowed with lands or other yearly revenues, for the maintenance of one or more priests to sing mass daily for the souls of the donors, and such

others as they appoint.—*Les Termes de la Ley.*

CHAUNTRY RENTS. Such rents as the tenants or purchasers of chauntry lands paid to the crown.—*Cowel.*

CHECK-ROLL. A book or roll wherein are written the names of those who are attendants and in pay to the king or other great personages. —*Cowel.*

CHERISANCE. An unlawful bargain or contract.—*37 Hen. 8, c. 9, as cited in Wishaw.*

CHEVAGE or CHERAGE. A sum of money paid by those who held their lands in villenage to their lord, as an acknowledgment of their dependence. It is also sometimes used for a sum of money given by one man to another of power and authority, for his maintenance and protection. *Les Termes de la Ley.*

CHEVANTIA (Fr. *chevarice*). A loan or an advance of money upon credit.—*Mon. Ang., tom. 1, p. 629; Cowel.*

CHEVISANCE (from the Fr. *chevir*). An agreement or composition made between a debtor and a creditor. But in our statutes it is more frequently used for an unlawful bargain or contract.—*Cowel.*

CHIEF, *Declaring in.* Signifies the same as "*declaring absolutely;*" which see.

CHIEF, *Examination of Witness in.* Every witness who gives his testimony in a trial at *nisi prius* is first examined by the counsel of the party on whose behalf he is called; and this first examination is termed his examination in *chief.* He is then subject to *cross*-examination by the counsel on the other side; which cross-examination may be in its turn succeeded by a *re*-examination by the counsel who called him.—*3 C. & P. 113.*

CHIEF-RENTS (*redditus capitales*). Those of the freeholders of manors are frequently so called, and they are also sometimes denominated *quit rents, quieti redditus;* because thereby the tenant goes quit and free of all other services.—*2 Bl. 42.*

CHIEF, *Tenants in.* All the land in the kingdom was supposed to be holden mediately or immediately of the king, who was styled the lord paramount, or above all; and those that held immediately under him, in right of his crown and dignity, were called his tenants in capite or in chief, which was the most honourable species of tenure, but at the same time subjected the tenant to greater and more burdensome services than inferior tenures did.—*2 Bl. 59.*

CHILD. This word, as used in *5 Geo. 4, c. 83, s. 4,* applies to *legitimate* children only; and therefore a bastard does not come within the provisions of that act of parliament. —*Reg. v. Mande, 6 Jur. 646.*

CHILDWIT. The custom of taking a fine or penalty of a bondwoman unlawfully begotten with child; some writers say that it is the *fine itself* and not the *custom of taking it.* Every reputed father of an illegitimate child begotten within the manor of Writtel in Essex pays to the lord for a fine *3s. 4d.*, and it seems in that part to extend as well to free as to bondwomen.—*Cowel.*

CHILTERN HUNDREDS. The stewardship of the *Chiltern Hundreds* is a nominal office in the gift of the crown, usually accepted by members of the House of Commons desirous of vacating their seats. "Her ma-

jesty's Chiltern Hundreds" are three in number, namely, Stoke, Desborough and Bonenham, and are distinguished by the use made of them for parliamentary purposes. By law a member once duly elected is compellable to discharge the duties of the trust conferred upon him, and is not enabled at will to resign it. But by stat. 6 Anne, c. 7, and several subsequent statutes, if any member accepts of any office of profit from the crown (excepting officers in the army or navy accepting a new commission), his seat is vacated. If, therefore, any member wishes to retire from the representation of the county or borough by which he was sent to parliament, he applies to the lords of the treasury for the stewardship of one of the Chiltern Hundreds, which, having received and thereby accomplished his purpose, he again resigns. —*Stephen's Bl.* 2, 403; *Rogers on Elect.* 55; 2 *Hatsell*, 41.

CHIMIN (Fr. *chemin*). A way; which is of two kinds, the king's highway, and a private way. The king's highway is that by which the king's subjects, and all under his protection, have free liberty to pass, although the property in the soil on each side may belong to some private person. A private way is that by which one or more persons have a right or liberty to pass through another person's ground.—*Cowel.* See also tit. *Way.*

CHIMIN COMMON. A common highway.—4 *Vin. Abr.* 502.

CHIMINAGE (from the Fr. *chemin*). A customary toll for having a road or way through a forest.—*Crompt. Jurisd.*; *Cowel.*

CHIMNEY MONEY or HEARTH MONEY. A duty imposed by 14 Car. 2, c. 2, of 2*s.* upon every hearth in a house.—*Cowel.*

CHIPPINGAVEL or CHEAPINGAVEL. A toll for buying and selling. —*Cowel.*

CHIRGEMOTE. CHIRCHGEMOTE (*forum ecclesiasticum*). An ecclesiastical meeting, a synod, or a meeting in a church or vestry.—*Cowel.*

CHIROGRAPH (*chirographum*). An instrument of gift or conveyance attested by the subscription and crosses of the witnesses, and was in the Saxon times called *Chirographum*, which being somewhat changed in form and manner by the Normans, was by them styled *charta*. Anciently, when they made a *Chirograph*, or deed which required a counterpart, as we call it, they engrossed it twice upon one piece of parchment contrarywise, leaving a space between, in which they wrote in great letters the word CHIROGRAPH, and then cut the parchment in two, sometimes even, and sometimes with *indenture*, through the middle of the word, concluding the deed with, *In cujus rei testimonium utraq; pars mutuo scriptis presentibus fide media sigillum suum fecit apponi.* This was afterwards called *dividenda*, because the parchment was so divided or cut. And the first use of these Chirographs was in Henry the Third's time. Chirograph was also of old used for a fine. And the manner of engrossing the fines and cutting the parchment in two pieces is still observed; whence the origin of the Chirographer's office.—*Cowel.*

CHIROGRAPHER OF FINES. *Chirographus finium et concordiarum*, (from the Greek χειρόγραφω, which is a compound of χειρ, a hand, and γράφω, I write). It signifies in the law the officer of the Common Pleas who engrosses fines in that court, acknowledged into a perpetual record; after they have been acknowledged and fully passed by those officers by whom

they were previously examined.—*Cowel.*

CHIVALRY (*servitium militare*). This word comes from the French *chevalier;* and signifies that peculiar species of tenure by which lands were formerly held, called tenure by knight's service. It is of a martial and military nature, and obliges the tenant to perform some noble or military office unto his lord.—2 *Bl.* 62.

CHIVALRY, COURT OF. See tit. *Court of Chivalry.*

CHOP-CHURCH. A nick-name given to those who used to change benefices. It is sometimes written *Church-chopper.*—9 *H.* 6, *cap.* 65; *Cowel.*

CHOSE (*thing*). This word is generally used in combination with others. The most common combinations in which it is found are the following; 1st. *chose local;* 2nd, *chose transitory;* 3rd. *chose in action.* Chose *local* is such a *thing* as is annexed to a *place;* thus a mill is a *chose local.* Chose *transitory* means any*thing* of a moveable or *transitory* nature, which may be taken or carried away from one place to another. *Chose in action* is a phrase which is sometimes used to signify a *right of bringing an action,* and at others the *thing itself* which forms the subject matter of that right, or with regard to which that right is exercised; but it more properly includes the idea both of *the thing* itself, and of the *right of action* as annexed to it. Thus when it is said that a debt is a *chose in action,* the phrase conveys the idea not only of the thing itself, i. e. the debt, but also of the right of action or recovery possessed by the person to whom the debt is due. When it is said that a *chose in action* cannot be assigned, it means that a thing to which a right of *action* is annexed, cannot be transferred to another together with such right. Thus if A owes B 10*l.*, it is obvious that the latter has a debt, and also a right of recovering such debt against A; now if B were to assign or transfer his debt, together with his right of recovery, to C, this would be *assigning a chose in action,* which the law does not allow.—*Co. Lit.* 214 *a,* 266 *a;* 2 *Roll.* 45; *Moulsdale v. Birchall,* 2 *Bl.* 820; *Sid.* 212.

CHRISTIANITATIS CURIA. See *Court Christian.*

CHURCH. A place of worship, to be adjudged a church in law, must have administration of the sacraments and sepulture annexed to it.—*Cowel; Fleta.*

CHURCH LAY. A church rate. See next title.

CHURCH RATE. A rate imposed upon the parishioners of a parish for the repairs of the church. It is sometimes called a *church lay.*

CHURCH-REVE. A churchwarden. The word *reve,* in Saxon, appears to be much the same as *guardian* in the French, and *church-reve* would thence appear to signify a guardian or overseer of the church.—*Cowel.*

CHURLE, *ceorle, earl.* Among the Anglo-Saxons a tenant at will of free condition, who held land from the *Thanes* on condition of rent or services. They were of two sorts; one who hired the lord's outland or tenementary land, as our farmers do now; the other, who tilled and manured the inland or demesnes (yielding work and not rent), and were thence called his sockmen or ploughmen.—*Spelman on Feuds; Cowel.*

CINQUE PORTS (*quinque portus*). Five important havens, formerly es-

teemed the most important in the kingdom. They are Dover, Sandwich, Romney, Hastings, and Hythe; Winchelsea and Rye have since been added. They have similar franchises in many respects with the counties palatine, and particularly an exclusive jurisdiction (before the mayor and jurats of the ports), in which the king's ordinary writ does not run. These ports have a governor, called the *Lord Warden of the Cinque Ports*, who has the authority of an admiral amongst them, and sends out writs in his own name.—3 *Bl.* 79.

CIRCADA. A tribute which was formerly paid to the bishop or archdeacon for visiting the churches.—*Du Fresne; Cowel.*

CIRCUIT. In order that suitors may not be put to the inconvenience of coming from the most distant parts of the country to the courts in London, the kingdom is divided into six divisions, called *circuits*; each circuit embracing several counties, and into which the judges twice a year (viz. after Hilary and Easter Terms) go, for the purpose of hearing such causes as are ready for trial.

CIRCUIT PAPER. A paper containing a statement of the time and place where the several assizes will be held, and other statistical information connected with the assizes.

CIRCUITY OF ACTION. Is where a party to an action, by an indirect and *circuitous* course of legal proceeding, makes two or more actions necessary—in order to obtain that justice, between all the parties concerned in the transaction, which by a more direct course might have been gained in a single action. As in an action on a contract, in which the defendant, instead of giving in evidence a breach of the warranty in mitigation of damages, allows the plaintiff to recover the full amount of the contract in the first action, and then subsequently commences against him a cross action to regain the amount to which the consideration had failed. (See tit. *Cross* Action.) Formerly indeed he was compelled to bring a cross action and had no other remedy, but more recently "the cases have established that the breach of the warranty may be given in evidence in mitigation of damages, on the principle, it should seem, of avoiding circuity of action."—*Per Tenterden, C. J.*, 2 *B. & Ad.* 462.

CIRCUMSPECTE AGATIS. The title of the statute 13 Edward I. regulating the jurisdiction of the temporal and ecclesiastical courts. The date usually assigned to it is 1285, but there seems every reason to believe that it was not in existence at that period. It was however cited as early as 19 Edw. 3. It originally was not a statute, but a writ supposed to have been issued in pursuance of the statute called Articuli Cleri, of which, in the form in which it is printed both in the authentic and ordinary edition of the statutes, it is a repetition and abridgment. It was probably a writ or mandate framed for the purpose of being issued by the king to his judges in behalf of the spiritual courts in or after 1315, and embodying what were then supposed to be the legitimate subjects of their jurisdiction. Its authority as a statute is however no longer questioned.—12 *Ad. & El.* 315.

CIRCUMSTANTIAL EVIDENCE. That evidence which may be afforded by particular circumstances. It is called *circumstantial evidence* in contradistinction to that species of evidence which is of a more positive and unequivocal nature. It is also called the doctrine of *presumptions*; because

when the fact itself cannot be *proved*, it may be *presumed*, by the proof of such circumstances as either *necessarily* or *usually* attend such facts.—3 *Bl.* 371.

CIRCUMSTANTIBUS, *Tales de.* Such as are present or standing by. This phrase is applied to the making up the number of persons on a jury, by taking some of the casual by-standers, who happen to be qualified for serving on a jury. This takes place when the jurors who are impanelled, from some cause or other, do not appear, or, if appearing, are challenged by either party, and so disqualified.—1 *Arch. Pract.* 419.

CIROGRAPHUM. See tit. *Chirograph.*

CITATIO AD INSTANTIAM PARTIS (22 & 23 *Car.* 2, for laying impositions on proceedings at law).—*Cowel.*

CITATION (*citatio*). The process used in the Ecclesiastical Courts to call the party injuring before them. It is the first step which is taken in an ecclesiastical cause, and is somewhat analogous to the writ of summons in the common law, or the subpœna in chancery.—3 *Bl.* 100.

CITY (*civitas*). A town corporate, which has usually a bishop and a cathedral church.—*Cowel.*

CIVILLY. See next title.

CIVILITER (*Civilly*). In a man's civil character or position, or by *civil*, in opposition to criminal process; as "sheriffs who execute process at their peril are answerable *civiliter* for what they do upon it;" or, "a man may, without his own fault, be possessed of a horse which has been stolen, but nevertheless he is answerable *civiliter* to the true owner of it."—1 *Smith's Leading Cas.* 221; 1 *B. & P.* 409, *per Rooke, J.*

CIVIL DEATH.—If a man entered into a monastery, or abjured the realm, he was formerly, and if he is attainted of treason or felony, he still is dead in law, and therefore if an estate be granted to any one for his life generally, it would determine by such *civil death.* For which reason in conveyances, the grant is usually made "for the term of a man's *natural* life," which can only determine by his *natural death.*—1 *Stephen's Bl.* 132, 240; 4 *Bl. Com.* 380; 3 *Inst.* 213; 3 *P. Wms.* 37, *n.* (*B*); 2 *Rep.* 48 *b.* See tit. *Death.*

CIVIL LAW. In its *general* signification is the established law of every particular nation, commonwealth, or city; and is the same with that which is commonly called municipal law. In its *particular* signification, however, it usually means the Roman law, as comprised in the institutes, code, and digest of the emperor Justinian.—1 *Bl.*; *Tomlins.*

CIVIL LIST. The civil list is properly the whole of the king's revenue in his own distinct capacity, although it is usually understood to include all those expenses which relate in any shape to civil government.—1 *Bl.* 332.

CIVIL SIDE. The legal business of the assizes is arranged according to the natural division of such cases as are merely *civil*, in which the disputes of subjects (*citizens*) as to property are decided, and those of a *criminal* nature, where men are charged with offences against the welfare of society at large. In the county hall or court in which the trials take place, it is very usual for one side or portion of the building to be appropriated to the hearing of cases of the

former character, and the other side or portion to those of the latter. And hence the phrase has become common that the judge is sitting "on *the civil side*," or "on *the criminal side*," meaning thereby that he is presiding at nisi prius, or trying a prisoner. In the larger circuits it is now customary for two judges to attend together, and then one of them sits on the "*civil*," the other on the "*criminal side*." See also tit. *Plea Side.*

CLAIM, *Continual.* When a man is entitled to enter into any lands or tenements of which another is seised in fee or in tail, and he who is so entitled makes *continual claim* to the lands or tenements before he, who is so seised, dies seised thereof; then even in the event of such person dying seised of the same, and the lands or tenements descending to his heir, may he who made such *continual claim* or his heir enter into the lands or tenements so descended, by virtue of his having made such *continual claim.* So if a man be disseised, and the disseisee makes *continual claim* to the tenements in the life of the disseisor, and the disseisor die seised in fee, and the land descend to his heir, yet notwithstanding its having so descended, the disseisee may enter upon the possession of the heir, by virtue of such *continual claim.* Such a claim must always be made within a year and a day before the death of the person holding the land, and as the claimant cannot know when such death will take place, he is, therefore, obliged *continually* to be making such claim, i. e. at the expiration of every year and a day, in order that he may be sure of his claim being made within a year and a day of the tenant's death; and hence it is termed *continual claim.*—*Litt.* 414; *Tomlins.*

CLAIM OF LIBERTY. A petition or suit to the king in the Court of Exchequer, to have liberties and franchises confirmed there by his attorney-general.—*Co. Ent.* 93; *Tomlins.*

CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM. A writ formerly in use whereby the king commanded the justices in eyre to admit a man's claim by attorney, who was employed in the king's services, and therefore could not come in his own person.—*Reg. of Writs, fol.* 19; *Cowel.*

CLARENDON, *Constitutions of.* In the reign of Henry the 2nd, A.D. 1164. Blackstone states that there are four things which peculiarly merit the attention of the legal antiquarian, one of which is the *constitutions of the parliament at Clarendon,* whereby the king checked the power of the pope and his clergy, and narrowed the exemption they claimed from the secular jurisdiction.—4 *Bl.* 422.

CLASSIARIUS. A seaman or soldier serving at sea.—*Cowel.*

CLAUSE ROLLS. Rolls preserved in the Tower, containing all such matters of record as were committed to *close writs.*—*Cowel.*

CLAUSUM FREGIT (*he broke the close*). Every unwarrantable entry on another's soil the law entitles a trespass, *by breaking his close.* The words of the writ of trespass command the defendant to show cause *quare clausum querentis fregit.*—3 *Bl.* 209. See tit. *Breaking a Close.*

CLAUSUM PASCHÆ. *Stat. of Westm.* 1. Lendemaine de la cluse de Pascha; i. e. in crastino clausi Paschæ, which is the morrow of the *octas* (or eight days) of Easter.—*Cowel.*

CLAVES INSULÆ. In the Isle of

Man ambiguous and weighty cases are referred to twelve persons called *claves insulæ*.—*Cowel.*

CLAVIA. An ancient species of tenure, *per serjeantiam claviæ*, by the serjeanty of the club or mace.—*Brady's Append. Introduct. to Eng. Hist.* 22; *Cowel.*

CLAWA. A close nook or small enclosure of land.—*Cowel.*

CLERGY, *Benefit of*, or privilege of clergy (*privilegium clericale*), formerly signified certain privileges which the clergy alone enjoyed. It had its original from the pious regard paid by Christian princes to the church in its infant state; and the ill use which the Popish ecclesiastics soon made of that pious regard. The exemptions which they granted to the church were principally of two kinds:—1. Exemption of *places* consecrated to religious duties, from criminal arrests; which was the foundation of sanctuaries; 2. Exemption of the *persons* of clergymen from criminal process before the secular judge in a few particular cases, which was the true original and meaning of the *privilegium clericale* or *benefit of clergy*. In England, however, although the usurpations of the Pope were very many and grievous, till Henry the Eighth entirely exterminated his supremacy, yet a total exemption of the clergy from secular jurisdiction could never be thoroughly effected, though often endeavoured by the clergy; and therefore, though the ancient *privilegium clericale*, was in *some* capital cases, yet it was not *universally* allowed. And in some particular cases, the use was for the bishop or ordinary to demand the clerks to be remitted out of the king's courts, as soon as they were indicted; concerning the allowance of which demand there was for many years great uncertainty, till at length it was finally settled in the reign of Henry the Sixth, that the prisoner should first be arraigned, and might either *then* claim his benefit of clergy, by way of declinatory plea; or *after conviction*, by way of arresting judgment. This latter way was most usually practised, as it was more to the satisfaction of the court, to have the crime previously ascertained by confession, or the verdict of a jury, and also it was more advantageous to the prisoner himself, who might possibly have been acquitted and so have needed not the benefit of his clergy at all. But afterwards other persons were placed upon the same footing with the clergy with respect to this privilege. It was formerly required that those who claimed benefit of clergy should be able to read; but by the 5 *Ann. c.* 6, it was enacted, that the benefit of clergy should be granted to all those who were entitled to ask it, without requiring them to read by way of conditional merit; hence persons convicted of manslaughters, bigamies, and simple grand larcenies, &c. were asked what they had to say why judgment of death should not be pronounced upon them; and they were then told to kneel down, and pray the benefit of the statute.—4 *Bl.* 365, 366, 371.

CLERGYABLE. Offences to which the benefit of clergy extended were so termed. See "*Clergy, Benefit of.*"

CLERICO ADMITTENDO. A writ of execution so called, directed to the bishop or archbishop, upon a person's being presented to a benefice recovered in a quare impedit, or assize of darrien presentment, requiring him to admit and institute such person.—3 *Bl.* 412.

CLERICO CAPTO PER STATUTUM MERCATORUM, &c. A writ directed to the bishop for the delivery of a

clerk out of prison, who was in custody upon the breach of a statute merchant.—*Reg. Orig.* 147; *Cowel.*

CLERICO CONVICTO COMMISSO GAOLÆ IN DEFECTU ORDINARII DELIVERANDO. A writ formerly in use for the delivery of a clerk to his ordinary, who formerly was convicted of felony because his ordinary did not challenge him according to the privilege of *clerks*.—*Reg. Orig.* 69.

CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM. A writ directed to the bailiffs who have thrust a bailiwick or beadleship upon one in holy orders, commanding them to release him again.—*Reg. Orig.* 143; *Cowel.*

CLERK (*clericus*). All clergymen who have not taken the degree of doctor, are in the law, and in all law proceedings, styled clerks. They are so called, because in the earlier ages all the *clerks* in the inferior law offices were selected from the clergy.

CLERK OF THE ACTS. An officer in the Navy Office, who receives and records all orders, contracts, bills, warrants, and other business transacted by the lord admiral and commissioners of the navy.—*Cowel.*

CLERK OF THE AFFIDAVITS. An officer whose duty it is to file all affidavits made use of in the Court of Chancery.—*Cunningham.*

CLERK OF THE ASSISE (*clericus assisarum*). A clerk whose duty it was to record all things judicially done by the justices of *assise* in their circuits;—*Cromp. Jurisd.* 227; *Cunningham*;—abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE BAILS. An officer of the Court of King's Bench, whose duty it was to file the bail-pieces taken in that court. This office was abolished by the 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE CHECK. An officer of the king's court, who has the *check* or controlment of the yeomen belonging either to the king, queen, or prince; either giving them leave, or permitting their absence, or non-attendance, or diminishing their wages for the same. He has also the regulating of the nightly watch in court.—33 *Hen.* 8, *cap.* 12; *Cunningham.*

CLERK CONTROLLER OF THE KING'S HOUSE. An officer in the king's court who has authority to allow or disallow charges and demands of *pursuivants, messengers of the green cloth, &c.* He has also the superintendence of all defects and miscarriages of the inferior officers, and is entitled to sit in the office with the superior officers for correcting any disorders.—33 *Hen.* 8, *c.* 12.

CLERK OF THE COMMONS. An officer whose duty it is to attend to matters connected with the business of the House of Commons. He is assisted by two "clerks assistant," who sit at the table with him; he signs orders of the House, endorses bills, reads anything required to be read, and makes short minutes of the business transacted, known as the "votes and proceedings." He holds his office for life under the crown, and is appointed by letters patent, in which he is recognized as "under clerk of the parliaments, to attend upon the commons."

CLERK OF THE CROWN. An officer of the King's Bench, whose duty it was to frame, read, and record all indictments against offenders who were there arraigned or indicted of any public crime. This office was abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE CROWN IN CHANCERY. An officer of the Court of Chancery, whose duty it was to attend the Lord Chancellor either in person or by deputy, and who prepared for the great seal, special matters of state by commission, either by direct orders from his majesty, or by order of his council, as well ordinary as extraordinary; such as commissions of lieutenancy; of justices of assise; *Oyer* and *Terminer*; general pardons at the king's coronation, &c.—*Cunningham; Cowel.*

CLERK OF THE DECLARATIONS. An officer of the Court of King's Bench, whose duty it was to file declarations in the various causes that were pending in that court. This office was abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE DELIVERIES. An officer in the *Tower*, whose duty it was to take indentures for stores, ammunition, &c. that were issued thence. —*Cowel.*

CLERK OF THE ENROLMENTS. An officer of the Common Pleas who enrolled and exemplified fines and recoveries, and returned writs of entry, summons, and seisin, &c.

CLERK OF THE ERRORS. An officer of the Court of Common Pleas, whose duty it was to certify and transcribe into the King's Bench the tenor of the records of the cause of action upon which the writ of error was brought. There was a similar officer in the Court of King's Bench, and also in the Exchequer. All these offices were abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE ESSOINS. An officer of the Court of Common Pleas, who kept the *essoin rolls*. His duty it was to provide the parchment and cut it into *rolls*; to mark the numbers thereon; deliver them out to the different officers of the court; receive them again when they were written, and to make up the whole bundles of every term.—*Cowel.*

CLERK OF THE ESTREATS. A clerk of the Court of Exchequer, whose duty it was every term to receive the estreats out of the Lord Treasurer's Remembrancer's office, and to write them out, to be levied for the king. This office is now abolished.—*Cowel.*

CLERK OF THE HANAPER or HAMPER. An officer of the Court of Chancery, whose duty it was to receive all the money due to the king for the seals of charters, patents, commissions, and writs; and also fees due to the officers for enrolling and examining the same. He was bound to attend the Lord Chancellor or Lord Keeper daily in term time and at all times of sealing; when he had with him leather bags, wherein were put all charters after they had been sealed; these bags were then sealed up by the lord chancellor's private seal, and delivered to the controller of the *hamper*.—*Cowel*; 2 *Edw.* 4, *c.* 1.

CLERK OF THE HOUSE OF COMMONS. An officer appointed by the Crown, whose duty it is to make a record of the proceedings of the House, which he or his deputies enter upon the journals; to receive and preserve the petitions presented to the House, and generally to assist the Speaker in the details of his very onerous duties. He is usually a barrister at law. Similar officers are employed in the House of Lords. By the 33 Geo. 3, c. 13, the Clerk of Parliament is directed to indorse on every act, immediately after the title thereof, the day, month, and year when the same shall have passed and shall have received the royal assent; and such indorsement shall be taken to be part of the act, and shall be

the date of its commencement, where no other commencement shall have been provided.—2 *Stephen's Bl.* 410.

CLERK OF THE JURIES. An officer of the Court of Common Pleas, whose duty it was to make up the writs of *habeas corpora* and *distringas*, for compelling the attendance of jurors after the jury or panel had been returned upon the *venire facias*. This office was abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE KING'S SILVER. An officer of the Court of Common Pleas, to whom every fine was brought after it had been with the *custos brevium*, and by whom the effect of the writ of covenant was entered into a paper book, &c.—*Cowel.*

CLERK MARSHAL OF THE KING'S HOUSE. An officer who attends the *marshal* in his court, and records all his proceedings.—33 *Hen.* 8, *c.* 12; *Cowel.*

CLERK OF THE MARKET. An officer of the king, whose duty it is to look after the king's measures, and to keep the standards of them, and to see that all those used in the various parts of England correspond with those standards.—*Cowel.*

CLERK OF THE NIHILS or NICHILS. An officer in the Exchequer, who makes a roll of all such sums as are *nihiled* by the sheriffs upon their estreats of *green wax*, and delivers the same into the Lord Treasurer's Remembrancer's office to have execution done upon it for the king.—5 *Rich.* 2, *c.* 13; *Cowel.*

CLERK OF THE ORDNANCE. An officer in the Tower, whose duty it is to register all orders concerning the king's *ordnance*.—*Cowel.*

CLERK OF THE OUTLAWRIES. An officer of the Court of Common Pleas, whose duty it was to make out writs of *capias utlagatum* after outlawry. Abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE PAPER OFFICE. An officer of the King's Bench, whose duty it was to make up the paper books of special pleadings and demurrers. Abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE PAPERS. An officer of the Court of Common Pleas, whose duty it is to have the custody of the papers of the warden of the Fleet Prison, and to enter commitments and discharges of prisoners, and deliver out day-rules, &c.—*Cunningham.*

CLERK OF THE PARLIAMENT ROLLS. An officer in the High Court of Parliament, who records all things done therein, and engrosses them fairly on *parchment rolls*, for their better preservation to posterity. There is one of these officers to each house of parliament.—*Cowel.* See also tit. *Clerk of the House of Commons.*

CLERK OF THE PARLIAMENTS. An officer in the House of Lords, whose duties are similar to those of the chief clerk in the House of Commons.—See tit. *Clerk of the House of Commons.*

CLERK OF THE PEACE. An officer belonging to the sessions of the peace, whose duty it is to read indictments, to enrol the acts, draw the process, and perform various other duties connected with the administration of justice at the sessions.—*Cowel.*

CLERK OF THE PELLS. An officer belonging to the Exchequer, whose duty it is to enter every teller's bill into a parchment roll (called *pellis receptorum*), and also to make another roll of payments (called

pellis erituum), in which he puts down by what warrant the money was paid. In ancient records this officer is called *clericus domini thesaurarii.*—22 & 23 *Car.* 2; *Cunningham.*

CLERK OF THE PETTY BAG. An officer of the Court of Chancery, whose duty it is to record the return of all inquisitions out of every shire; to make out patents of customers, gaugers, controllers, and aulnegers; all *congé d'élires* for bishops; the summons of the nobility, clergy, and burgesses to parliament, &c. — 33 *Hen.* 8, *c.* 22; *Cowel.*

CLERK OF THE PIPE. An officer in the Court of Exchequer, who having all accounts and debts due to the king delivered and drawn out of the Remembrancer's offices, charges them down in the great roll. He is called *clerk of the pipe* from the shape of that roll, which is put together like a *pipe.*—*Cowel.*

CLERK OF THE PLEAS. An officer in the Court of Exchequer, in whose office all the officers of the court (upon especial privilege belonging to them), should sue or be sued in any action. — *Cowel.* Abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE PRIVY SEAL. There are four of these officers, who attend the *lord privy seal*, or in the absence of a *lord privy seal*, the principal secretary, and whose duty it is to write and make out all things that are sent by warrant from the signet to the *privy seal*, and are to be passed to the *great seal*; and also to make out *privy seals* (as they are termed) upon any special occasion of his majesty's affairs, as for the loan of money and such like purposes.—27 *Hen.* 8, *c.* 11; *Cowel.*

CLERK OF THE ROLLS. An officer of the Court of Chancery, whose duty it is to search for, and copy deeds, offices, &c.—*Tomlins.*

CLERK OF THE RULES. An officer in the Court of King's Bench, who drew up and entered all *rules* and orders made in court, &c. Abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE SEWERS. An officer who attends the commissioners of sewers, and records all things they do by virtue of their commission.—*Cowel.*

CLERK OF THE SIGNET. An officer whose duty it is to attend on his majesty's principal secretary, who always has the custody of the *privy signet*, as well for the purpose of sealing his majesty's private letters, as also grants which pass his majesty's hand by bill signed. There are four of these officers. —27 *Hen.* 8, *c.* 11; *Cowel.*

CLERK OF THE SUPERSEDEAS. An officer belonging to the Court of Common Pleas, who made out writs of *supersedeas* (upon defendants appearing to the *exigent*), whereby the sheriff was forbidden to return the *exigent.*—*Cowel.*

CLERK OF THE TREASURY. An officer of the Court of Common Pleas, whose duty it was to keep the records of the court, and to make out the records of *nisi prius*; he was also entitled to the fees due for all searches; and had the certifying of all records into the King's Bench when a writ of error was brought. Abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERK OF THE KING'S GREAT WARDROBE. An officer of the king's household, whose duty it is to keep an inventory of all things belonging to the royal wardrobe.—1 *Edw.* 4, *c.* 1; *Tomlins.*

CLERK OF THE WARRANTS. An officer of the Court of Common Pleas, who entered all warrants of attorney for plaintiffs and defendants in suits; and enrolled all deeds of indenture of bargain and sale which were acknowledged in court or before any of the judges out of court, &c. This office was abolished by 7 Will. 4 & 1 Vict. c. 30.

CLERONIMUS. An heir.—*Mon. Angl. tom.* 3, *p.* 129; *Cowel.*

CLITONES. Not only the eldest, but all the sons of kings.—*Cowel.*

CLOERE. A prison or dungeon. The dungeon or inner prison of Wallingford castle in Henry the Second's time was called *Cloere Brien.*—*Cowel.*

CLOSE. The interest of a party in any particular piece of land, and not merely, as in its popular acceptation, a close or inclosure.—1 *Chit. Pl.* 174; 2 *Chit. Bl.* 17, *n.* 3; *Stammers* v. *Dixon*, 7 *East*, 207, *per Ellenborough, C. J.*

CLOSE, *Breaking a.* Unlawfully entering upon a person's land or soil, &c.

CLOSE ROLLS and CLOSE WRITS. Certain letters of the king sealed with his great seal and directed to particular persons, and for particular purposes, and not being proper for public inspection, are closed up and sealed on the outside, and are thence called *writs close* (*literæ clausæ*), and are recorded in the *close rolls* in the same manner as others are in the *patent rolls* (*literæ patentes*), or *open* letters.—2 *Bl.* 346.

CLOSH. A game supposed by some to be the same as our nine pins, and forbidden by stat. 17 Ed. 4, c. 3, and 33 Hen. 8, c. 9.

CLOUGH. As used in Domesday, signifies *valley*; but with merchants it signifies an allowance for the turn of the scale on buying goods wholesale by weight.—*Cowel*; *Lex Mercat.*

CLOVE. The two and thirtieth part of a weigh of cheese, i. e. eight pounds.—9 *Hen.* 6, *c.* 8; *Cowel.*

CLYPEUS. One of a noble family; *clypei prostrati*, one of a noble family extinct.—*Cowel.*

COCHERINGS. An exaction or tribute in Ireland, now reduced to a chief rent.—*Cowel.*

COCKET. A piece of parchment sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandizes are customed. It is sometimes used for the custom-house seal.—*Reg. of Writs*, 192; *Cowel.*

CODICIL (*codicillus*, a little book or writing). A supplement to a will, or an addition made by the testator and annexed to the will, being written for its explanation, alteration, or for the purpose of making some addition to, or some subtraction from the dispositions of the testator as contained in his will.—2 *Bl.* 500.

COFFERER OF THE KING'S HOUSEHOLD. One of the principal officers of the king's household, next in rank to the comptroller; he has the charge and superintendence of the other officers of the household, to whom also he pays their wages.—39 *Eliz. c.* 7; *Cowel.*

COGNATI. Relations by the mother's side; the same as *agnati* are relations by the father.—2 *Bl.* 235.

COGNATIONE. See tit. *Cousenage.*

COGNISANCE or CONUSANCE.

This word has several significations. 1st. It signifies an *acknowledgment*. It is used in this sense when applied to *fines* or those fictitious suits, by means of which estates in lands were transferred from one party to another. Thus a fine "sur *cognizance* de droit" signified a fine upon *acknowledgment* of the right. 2nd. The word is applied to that plea or answer put in by the defendant in an action of replevin, when he *acknowledges* the taking of the distress in respect of which the action is brought, but insists that such taking was legal, as he acted by the command of another who had a right to distrain. Here, it will be observed, the defendant makes an *acknowledgment* of the fact charged against him, but offers a legal excuse for his conduct.—See *Trevilian* v. *Pyne*, 1 *Salk.* 107; *Chambers* v. *Donaldson*, 11 East, 65. 3rd. It is used in the sense of judicial notice or superintendence. Thus, cognizance of pleas signifies the right or privilege granted by the crown to any person or body corporate, not only to hold pleas within a particular limited jurisdiction, but also to *take cognizance* of them, i. e. to take judicial notice or superintendence of them. Thus, when a scholar or other privileged person of the university of Oxford or Cambridge is sued in the courts of Westminster for any cause of action, excepting a question of freehold, in such case, by the charter of those learned bodies, the chancellor or vice-chancellor may put in a *claim of cognizance*, i. e. a claim to take judicial superintendence of, or to adjudicate upon, the subject-matter of the action.—3 *Bl.* 298.

COGNITIONIBUS MITTENDIS. A writ to one of the justices of the Common Pleas, or other who had power to take a fine, and who, having taken acknowledgment thereof, deferred to certify it, commanding him to certify it.—*Reg. Orig.* 68; *Cowel.*

COGNIZANCE. See tit. *Cognisance.*

COGNIZOR. He who levied a fine was called the *cognizor*.—2 *Bl.* 350.

COGNIZEE. He to whom a fine was levied was called a *cognizee*.—2 *Bl.* 351.

COGNOVIT ACTIONEM. An instrument signed by a defendant in an action, *confessing* the plaintiff's demand to be just. The defendant, who signs this *cognovit*, thereby empowers the plaintiff to sign judgment against him, in default of his paying the plaintiff the sum due to him within the time mentioned in the cognovit.—2 *Bl.* 304.

COHUAGIUM. A tribute that formerly used to be paid by those who met in a market or fair.—*Du Fresne; Cowel.*

COIF. Our serjeants at law are called serjeants of the *coif*, from the circumstance of the lawn *coif* which they wear on their heads, under their caps, when they are elevated to that rank. It was originally used to cover the crown of the head, which was closely shaved, and a border of hair left round the lower part, which made it look like a crown, and was thence called *corona clericalis*, or tonsuram clericalem.—*Cowel.*

COLIBERTS (*coliberti*). Those freemen who had been manumitted by their lord or patron. Coke says that they were the same as a *sokeman*, or one who held in free socage, and yet was obliged to do customary services for the lord.—*Domesday; Cowel.*

COLLATERAL (*collateralis*), from the Lat. *laterale*, that which hangs by the side. Its legal signification does not differ from its common acceptation. Thus, a *collateral assurance* signifies an assurance *besides* the

principal one. So when a man mortgages his estates as security to a party lending him a sum of money, he also may enter into a bond, as an additional or *collateral* security. A *collateral* security is, therefore, something in *addition* to the direct security, and in its nature usually subordinate to it; and it is in the nature of a double security, so that when one fails, the other may be resorted to.

COLLATERAL CONSANGUINITY or COLLATERAL KINDRED. That which exists between persons who are derived from the same stock or ancestors, however remote. Every person who is descended or propagated from the same stem (i. e. from the same male or female lineal ancestor) from which any other particular person is descended or propagated, and who is neither the immediate parent or progenitor, nor the progeny of such particular person, is properly and aptly denominated or defined to be a *collateral* relative. And when any person is the *collateral* relative of any other person, all the descendants from such persons, reciprocally and respectively, are *collateral* relations.—2 *Chitty's Bl.* 204, *note* 5.

COLLATERAL ISSUE. When a prisoner has been tried and convicted, and he then pleads in bar of execution *diversity of person*, i. e. that he is not the same person who was attainted, and the like; this question of fact, whether or not he *is* the same person, is called a *collateral issue*, and a jury is then impanelled to try this issue, viz. the identity of his person.—4 *Bl.* 396.

COLLATERAL WARRANTY. - In alienating property by deed there was usually a clause in it called the clause of warranty, whereby the grantor, for himself and his heirs, warranted and secured to the grantee the estate so granted. This warranty was either *lineal* or *collateral*. Lineal warranty was where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor who made the warranty; as where a father, or an elder son in the life of the father, released to the disseisor of either themselves or the grandfather, with warranty, this was lineal to the younger son. *Collateral warranty* was where the heir's title to the land neither was nor could have been derived from the warranting ancestor; as where a younger brother released to his father's disseisor, with warranty, this was collateral to the elder brother.—2 *Bl.* 300, 301.

COLLATIO BONORUM. The bringing of any portion or sum of money advanced by a father to a son or daughter into *hotch-pot*, in order to have an equal share with the other children of his personal estate, when he dies, in pursuance of the statutes of distribution.—*Tomlins.*

COLLATION TO A BENEFICE (*collatio beneficii*). Advowsons are either *presentative*, *collative*, or *donative*; an advowson presentative is where the patron has a right of presentation to the bishop or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified, and this is the most usual advowson. An advowson *collative* is where the bishop and patron are one and the same person, in which case the bishop cannot present to himself, but he does in the one act of collation, or conferring the benefice, the whole that is done in common cases by both presentation and institution.—2 *Bl.* 22.

COLLATION OF SEALS. The setting of one *seal* on the back or re-

verse of the other upon the same label.—*Cowel.*

COLLATIONE FACTA UNI POST MORTEM ALTERIUS. A writ directed to the justices of the Common Pleas, commanding them to issue their writ to a bishop for the admission of a clerk in the place of another presented by the king, who had died during the suit between the king and the bishop's clerk; for judgment having once passed for the king's clerk, and he dying before admission, the king might bestow his presentation on another.— *Reg. of Writs; Cowel.*

COLLATIONE HEREMETAGII. A writ by which the king conferred the keeping of a *hermitage* upon a clerk. *Reg. Orig.* 303, 308; *Cowel.*

COLLATIVE ADVOWSON. See tit. *Collation to a Benefice.*

COLLEGIATE CHURCH. A church built and endowed for a society or body corporate, of a dean or other president and secular priests, as canons or prebendaries.—*Cowel.*

COLLIGENDUM BONA DEFUNCTI (*Letters ad*). When a person dies intestate and leaves no representatives or creditors to administer; or, leaving such representatives and creditors, they refuse to take out administration, &c. the ordinary may commit administration to such discreet person as he approves of, or grant him these letters *ad colligendum bona defuncti* (to collect the goods of the deceased), which neither constitutes him executor or administrator, his only business being to take care of the goods, and to do other acts for the benefit of those who are entitled to the property of the deceased.—2 *Bl.* 505.

COLLOQUIUM (*discourse*). That part of the declaration in an action for slander which alleges that the words were spoken *of and concerning* the plaintiff, or *of and concerning* the plaintiff in the way of his trade or profession, &c. The word is commonly used, not in its strict sense, as denoting a conversation or discourse on the subject-matter previously stated in the declaration, but as a general averment, that the publication was made *of and concerning* those facts. Thus, where the words spoken of a justice of the peace were, "I have been often with Sir John Isham for justice, but could never get any thing at his hands but injustice," it was held that the words were actionable without any *colloquium*, i. e. without any averment that the words were spoken of and concerning him in his office or capacity of justice; for the court would assume that the words were spoken of him *as a justice*, and not as a private man.—*Cro. Car.* 15, 192, 459; *Stark. on Sland.* 412, *n.* (*g*), 413, 414, 2*nd edit.*

COLLUSION (*collusio*). A deceitful agreement or compact between two or more persons, for the one party to bring an action against the other for some evil purpose, as to defraud a third party of his right.—*Bro. tit. Collusion; Les Termes de la Ley.*

COLONUS. A husbandman or villager who was bound to pay yearly a certain tribute, or at certain times of the year to plough some part of the lord's land. Hence the word *clown*.—*Cowel.*

COLOUR. A technical term used in pleading to signify that apparent right of the opposite party, the admission of which is required in all pleadings, by way of confession and avoidance. Of such pleadings it is, as the name imports, of their very essence to *confess* the truth of the allegation which they propose to an-

swer or avoid, which formerly was done by an introductory sentence—*True it is that, &c.* preceding the defence relied upon in answer. But though this formal admission is now generally abandoned, it is still essential that the confession clearly appear on the face of the pleading. In many cases it is absolute and unqualified; as in an action on a covenant, a plea of release admits absolutely the execution of the covenant and the breach complained of; but in some, the confession is of a qualified kind, or *sub modo* only. Thus, to an action of trespass for taking the plaintiff's corn, a plea that the defendant was rector, and that the corn was set out for tithe, and that he took it as such rector, would be a good plea by way of confession and avoidance. For though there is no direct confession that the defendant took the plaintiff's corn as alleged in the declaration, but on the contrary, an assertion of a title to the corn in himself, yet the plea implies that the plaintiff was the original owner, and entitled against all the world, except the defendant. There is, therefore, a confession, so far as to admit some sort of apparent right or *colour* of claim in the plaintiff, and is therefore within the rule laid down by pleaders on this subject, *that pleadings in confession and avoidance should give colour.* The colour thus explained, inherent in the structure of all pleadings in confession and avoidance, is termed *implied colour*, to distinguish it from *express colour*, which, instead of an implied admission, is a direct and positive assertion, of an apparent title in the opposite party, introduced into pleadings of this nature to satisfy the rule as to confession or admission. This latter kind of *colour* (now of rare occurrence, but to which reference is most usually made when that technical term is used per se) is employed when the pleader is desirous of pleading by way of confession and avoidance in preference to a traverse, and the facts of his case admit no sort of title in the opposite party, or, in other words, give no implied colour. He, then, for the *express* purpose of giving colour, inserts in his plea a fictitious allegation of some colourable but insufficient title in the plaintiff, which he at the same time avoids by the preferable title of the defendant. And in his replication, the plaintiff is not allowed to traverse the fictitious matter thus suggested, for the fiction thus employed, to prevent a difficulty of form, the law favours. The practice of giving *express colour* seems now entirely confined to trespass and trover, and in those actions extends to no other pleading than the plea. The form adopted in trespass to land is to allege a defective charter of demise, and in trespass for taking goods, that the defendant delivered the goods to a stranger, who delivered them to the plaintiff, from whom the defendant took them. By these allegations a colourable or apparent right is given to the plaintiff in both cases, and the pleas are rendered good, which otherwise would have been defective for want of colour.—*Stephen on Pl.* 229 *et seq.*; 1 *Ch. Pl.* 504; 3 *Reeves, E. L.* 438.

COLOUR OF OFFICE (*color officii*). An act evilly done by the countenance of an office; it is always taken in the worst sense, being grounded on corruption and vice, to which the office is as a shadow or colour or veil to the falsehood.—*Cowel; Plowden.*

COMBARONES. The fellow-members, fellow-barons, or commonalty of the *cinque ports.* The title of *barons* has since been withdrawn from the commonalty to distinguish their representatives in parliament. —*Cowel.*

COMBAT. See *Battel.*

COMBUSTIO DOMORUM. See *Arson.*

COMBUSTIO PECUNIÆ. The method formerly in use for trying mixed and corrupt money, by melting it down upon payments of it into the exchequer. It differed little or nothing from the present method of *assaying* silver. — *Lowndes' Essay on Coins; Cowel.*

COMITATU COMMISSO. A writ or *commission* by which a sheriff is authorized to take upon himself the command of his county.—*Reg. Orig.* 295; *Cowel.*

COMITATU ET CASTRO COMMISSO. A writ whereby the charge of a county, together with the keeping of a castle, is committed to the sheriff.—*Reg. Orig.* 295; *Cowel.*

COMITATUS. A county; a train of followers.

COMMANDER. See tit *Commandery.*

COMMANDERY (*præceptoria*). A manor or chief messuage, with lands and tenements appertaining thereto, belonging to the priory of St. John of Jerusalem in England; and he who had the government of any such manor or house was called the *commander.*—*Cowel; Camden.*

COMMANDMENT (*præceptum*). This word is variously used; as the *commandment of the king*, when upon his motion or from his own mouth he sends any man to prison. *Commandment of the justices*, which is either absolute or ordinary; *absolute*, when upon their own authority they commit a man to prison for punishment; *ordinary*, when they commit one rather for safe custody than for punishment. *Commandment* is also used for the offence of him who wills another man to transgress the law, as to commit theft, murder, &c.—*Staunf. Pl. Cor.* 72; *Cunningham.*

COMMARCHIO. The boundaries or confines of the land.—*Du Fresne; Cowel.*

COMMENDAM (*ecclesia* commendata *vel custodia ecclesiæ alicui commissa*). The holding a living or benefice *in commendam* is (where a vacancy occurs) holding such a living *commended* by the crown until a proper pastor is provided for it. This may be temporary for one, two, or three years; or perpetual, being a kind of dispensation to avoid the vacancy of the living, and is called a *commenda retinere.* These *commendams* are now seldom granted except to bishops.—1 *Chitty's Bl.* 393, *and note* 46.

COMMENDA RECIPERE. To take a benefice *de novo* in the bishop's own gift, or the gift of some other patron consenting to the same; and this is the same to him as institution and induction are in another clerk. —*Hob.* 144; 1 *Bl.* 393.

COMMENDARY or COMMENDATORY. He who holds a benefice or church living *in commendam.*—*Cowel.*

COMMENDATORS. Secular persons on whom benefices or church livings are bestowed. They are so called because the benefices were *commended* and intrusted to their oversight; they are not proprietors, but only a kind of trustees.—*Tomlins.*

COMMENDATORY LETTERS. Letters of recommendation written by one bishop to another in behalf of any of his clergy who may have occasion to travel into another diocese, in order that they may be well received by their brethren, or that they may be promoted, or that necessaries may be administered to them.—*Bede, lib.* 2, *c.* 18; *Cowel.*

COMMENDATUS. One who lives under the protection of a great man. —*Spelman; Cowel.*

COMMERCE. The distinction made between commerce and trade is, that the former relates to our dealings with foreign nations, or our colonies, &c., the latter to our own traffic and dealings at home.—*Lex Mercat.; Tomlins.*

COMMISSARY (*commissarius*). In the ecclesiastical law is a title applied to those who exercise spiritual jurisdiction in those parts of the diocese, which are too far distant from the chief city for the chancellor to call the people to the bishop's principal court without occasioning them great inconvenience. These officers were ordained to supply the bishop's office in the distant places of his diocese, or in such parishes as were peculiar to the bishop and were exempted from the jurisdiction of the archdeacon.—*Lyndewood's Provin.; Cowel.*

COMMISSION (*commissio*). In our law much the same as *delegatio* with the civilians, and is commonly understood to signify the warrant, authority, or letters patent which empower men to perform certain acts, or to exercise jurisdiction either ordinary or extraordinary. In its popular sense it frequently signifies the *persons* who act by virtue of such an authority. There are various sorts of commissions, which will be found under their proper titles.

COMMISSION *for Royal Assent.* See tit. *Royal Assent.*

COMMISSION OF ARRAY. See *Array.*

COMMISSIONS OF ASSIZE. Commissions empowering the judges to sit on the circuit, for the purpose of holding the assizes.

COMMISSION OF ASSOCIATION. A commission empowering two or more learned persons to be added to, or to *associate* themselves with the justices in the circuits and counties in Wales.

COMMISSION OF CHARITABLE USES. A commission issuing out of the Court of Chancery to the bishop and others, when lands which are given to charitable uses have been misemployed, or there is any fraud or dispute concerning them, to inquire of and redress the same.

COMMISSION OF DELEGATES. When any sentence was given in any ecclesiastical cause by the archbishop, this commission under the great seal was directed to certain persons, usually lords, bishops, and judges of the law, to sit and hear an appeal of the same to the king in the Court of Chancery.

COMMISSION OF BANKRUPT. A commission or authority granted by the Lord Chancellor to such discreet persons as he shall think proper, to examine the bankrupt in all matters relating to his trade and effects, and to perform various other important duties connected with bankruptcy matters; these persons are thence called *commissioners of bankruptcy*, and have in most respects the rights and privileges of judges in their own courts.

COMMISSION TO EXAMINE WITNESSES. When a *cause* of action arises in a foreign country, and the witnesses reside there, or in a cause of action arising in England, and the witnesses are abroad or are shortly to leave the kingdom; or if witnesses residing at home are aged and infirm, and therefore cannot come to court; in any of these cases a court of equity will grant a *commission* to certain persons to attend these witnesses wher-

ever they may reside, and to examine them and take down their depositions in writing upon the spot, and these depositions are then received in court as valid evidence in the cause.

COMMISSION TO INQUIRE OF FAULTS AGAINST THE LAW. An ancient commission issued on extraordinary occasions and corruptions.

COMMISSION OF LUNACY. A commission issuing out of chancery authorizing certain persons to inquire whether a person represented to be a lunatic is so or not, in order that, if he is a lunatic, the king may have the care of his estate.

COMMISSION OF THE PEACE. A *commission* from the king under the great seal, appointing certain persons therein named jointly and separately justices of the peace.

COMMISSION OF OYER AND TERMINER. See tit. *Oyer and Terminer.*

COMMISSION OF REBELLION, or, as it is otherwise called, a *Writ of Rebellion.* Where a party to a suit in chancery has disobeyed any command of the court properly signified to him, he is said to be in contempt, upon which certain proceedings take place which are known by the name of *process of contempt.* One of the formula in this process of contempt is a *commission of rebellion*, which is a commission directed to four or more commissioners (named by the plaintiff in the suit, or his solicitor), directing them to take the defendant if they can; and if when taken he still refuses to perform the command of the court, they bring him before the bar of the court, and if he then persists in his disobedience he is committed to the Queen's prison.—*Gray's Chan. Pract.*

COMMISSION OF SEWERS. A commission or authority to certain persons directing them to see drains and ditches, &c. well kept and maintained in various parts of England. —23 *H.* 8, *c.* 5.

COMMISSION TO TAKE ANSWERS IN EQUITY. When a defendant in a suit lives more than twenty miles from London, there may be a *commission* granted to take his answer in the country, where the commissioners administer to him the usual oath, and then the answer being sealed up, either one of the commissioners carries it up to court, or it is sent by a messenger, who swears that he received it from one of the commissioners, and that the same has not been opened or altered since he received it.—3 *Bl.* 447.

COMMISSIONER. He to whom a commission is directed, and who has to perform the duties therein directed to be done.

COMMITMENT. The sending or committing a person who has been guilty of any crime to prison or gaol by warrant or order.—4 *Bl.* 296.

COMMITTALS (see tit. *Commitment*). The Houses of Parliament possess the power of committing both their own members and others for a breach of privilege; but such power is confined to the session, and consequently concludes with the prorogation.

COMMITTEE. An assembly of persons to whom matters are referred. A *committee* of the House of Commons is a *committee* to whom a bill after the second reading is committed, that is, referred; and is either selected by the house in matters of small importance, or else upon a bill of consequence the house resolves itself into a *committee* of the whole house. A *committee* of the whole house is formed of every member; and to form it, the speaker quits the

chair (another member being appointed chairman), and may sit and debate as a private member. In these *committees* the bill is debated clause by clause, amendments made, the blanks filled up, and sometimes the bill almost entirely remodelled. After it has gone through this *committee*, it is again brought before the house for reconsideration, after which it is read a third time, and then passed or not passed, as the case may be. A *committee* also signifies the person or friend to whom the Lord Chancellor *commits* the care of an idiot or lunatic.—1 *Bl.* 183, 305.

COMMITTEE *of Supply.* A committee of supply is a committee of the House of Commons, in which the grants of money necessary for the public service are voted, after the estimates of the sums required by the various public departments have been laid before the house.

COMMITTEE *of Ways and Means.* This committee is one which follows next in order to a committee of supply in the financial business of the House of Commons; and its object is to consider the ways and means of raising the supply which has previously been granted in the other committee. The difference between them is that one controls, the other provides.

COMMITTEE *of whole House.* See tit. *Chairman of Committees of the whole House.*

COMMITTEE *on Private Bills.* The difference between a committee on a private bill and a committee on a public bill is, that while the latter consists of the house itself, with a chairman of committees presiding instead of the speaker, the former consists of a selected number of members who sit in a committee room and take evidence for and against the bill, the witnesses being examined by counsel as in a court of justice. In the commons' committees on private bills the public are admitted; but from the lords' committees they are excluded.

COMMITTEE, *Select.* A select committee consists of a certain number of members of either house of parliament, appointed to inquire into and report upon matters specially referred to them. It is called a *select* committee, as distinguished from a committee of the whole house, a committee of supply, a committee of ways and means, &c. and it usually conducts its proceedings in a separate apartment provided for the purpose, and not in the body of the house itself. Amongst the most important of this class of committees, railway and election committees may be instanced as examples.

COMMON or RIGHT OF COMMON. An incorporeal hereditament: being a profit which a man hath in the land of another, as to feed his beasts, to catch fish, to dig turf, to cut wood, or the like. And hence common is chiefly of four sorts; common of pasture, of piscary, of turbary, and of estovers. Common of *pasture* is a right of feeding one's beasts on another's land, for in those waste grounds which are usually called commons, the property of the soil is generally in the lord of the manor, as in common fields it is in the particular tenants. This kind of common is either *appendant*, *appurtenant*, *because of vicinage*, or *in gross*. Common *appendant* is a right belonging to the owners or occupiers of arable land to put commonable beasts upon the lord's waste, and upon the lands of other persons within the same manor, which are either beasts of plough, or such as manure the ground. Common *appurtenant* ariseth from no connexion of tenure, nor from any absolute necessity, but may be annexed

to lands in other lordships, or extend to other beasts besides such as are generally commonable, as hogs, goats, or the like, which neither plough nor manure the ground. This not arising from any natural propriety or necessity like common appendant, is therefore not of general right, but can only be claimed by immemorial usage and prescription, which the law esteems sufficient proof of a special grant or agreement for this purpose. Common *because of vicinage* or neighbourhood is where the inhabitants of two townships which lie contiguous to each other, have usually intercommoned with one another, the beasts of the one straying mutually into the other's field without molestation from either. Common *in gross* or at large is such as is neither appendant nor appurtenant to land, but is annexed to a man's person, being granted to him and his heirs by deed, or it may be claimed by prescriptive right, as by a parson of a church, or the like corporation sole. This is a separate inheritance, entirely distinct from any landed property, and may be vested in one who has not a foot of ground in the manor. All these species of pasturable common may be and usually are limited as to number and time, but there is also common *without stint*, and which lasts all the year. Common of *piscary* is a liberty of fishing in another man's water, as common of *turbary* is a liberty of digging turf upon another man's ground. There is also a common of digging for coals, minerals, stones, and the like. All these bear a resemblance to common of pasture in many respects, though in one point they go much further, common of pasture being only a right of feeding on the herbage and vesture of the soil which renews annually; but common of turbary and those aforementioned are a right of carrying away the very soil itself. Common of *estovers* or *estouviers*, that is, *necessaries*, (from *estoffer*, to furnish,) is a liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate. The Saxon word *bote* is used by us as synonymous to the French *estovers*, and therefore house-bote is a sufficient allowance of wood to be employed in making all instruments of husbandry; and haybote or hedgebote is wood for repairing of hays, hedges, or fences. These several species of commons do all originally result from the same necessity as common of pasture, *viz.*, for the maintenance and carrying on of husbandry; common of piscary being given for the sustenance of the tenant's family; common of turbary and fire-bote for his fuel, and house-bote, plough-bote, cart-bote, and hedge-bote, for repairing his house, his instruments of tillage, and the necessary fences of his grounds.—2 *Bl.* 32 to *35*.

COMMON BAIL. See tit. *Appearance.*

COMMON BAR. A plea was so termed, which was frequently pleaded by a defendant in an action of trespass *quare clausum fregit*. In this action, if the plaintiff declared against the defendant for breaking his close in a certain parish, without otherwise particularizing or describing the close, and the defendant himself happened to have *any* freehold land in the same parish, he frequently affected to mistake the close in question for his own, and pleaded what was called the *common bar*, viz. that the close in which the trespass was committed was his own freehold, which compelled the plaintiff to new assign, i. e. to assign his cause of complaint over again, alleging that he brought his action in respect of a trespass committed upon a different close from that claimed by the defendant as his own freehold. Now, however, a defendant cannot well affect ignorance

with regard to the real close, as by a rule of court (Hil. Term, 4 Will. 4), the plaintiff is now bound to *particularize* the close or place in the declaration, by assigning to it its familiar name, or by describing its abuttals or other sufficient description. The above mentioned plea is also called a *bar at large* and a *blank bar.*—*Steph. Plead.* 250, *4th ed.*

COMMON BENCH (*bancus communis*). The Court of Common Pleas was formerly so called, because the causes of *common persons* were tried and determined in that court.—*Cowel.*

COMMON DAY IN PLEA OF LAND. In 1 Rich. 2, c. 17, is an ordinary day in court, as Octabis Hilarii Quindena Paschæ, &c. mentioned in 51 Hen. 3, concerning general days in the Bench.—*Cowel.*

COMMON FINE (*finis communis*). A certain sum of money which the resiants within the liberty of some leets pay to the lords; in some places called *head-silver, head-pence,* and in other places *cert-money.*—*Cowel.*

COMMON INTENDMENT. The plain common meaning of any writing as apparent on the face of it, without straining or distorting the meaning of the writer. *Bar to common intendment* is an ordinary or general bar to the declaration of a plaintiff. —*Co. Lit.* 78; *Cowel.*

COMMON INTENT. "Certainty in pleading has been stated by Lord Coke (Co. Litt. 303) to be of three sorts, viz. certainty to a *common intent,* to a certain intent in general, and to a certain intent in every particular. By a *common intent* I understand that when words are used which will bear a *natural* sense, and also an *artificial* one, or one to be made out by argument or inference, the *natural* sense shall prevail; it is simply a rule of construction, and not of addition. *Common intent* cannot add to a sentence words which are omitted."—*Per Buller, J. Dovaston* v. *Pyne,* 2 *H. Bl.* 527; 2 *Smith's L. C.* 93.

COMMON JURY. See tit. *Jury.*

COMMON LAW. These words are used in various senses. The following are amongst the most important: 1st. As designating that branch of the municipal law of England which does not owe its origin to parliamentary enactment, and which, as opposed to the latter, is termed the *lex non scripta* or unwritten law. 2nd. As designating a particular section or division of the *lex non scripta* or common law, as distinguished from some other section or division of the *lex non scripta* or common law. 3rd. The phrase *at common law.* These it will now be attempted to explain in the above order. 1st. As designating the *lex non scripta* or unwritten law. The law of England is composed of acts of parliament or statutes, and the custom of the realm. The custom of the realm consists of those rules and maxims concerning the persons and property of men that have obtained by the tacit assent and usage of the inhabitants of this country, being of the same force with acts of the legislature, the difference between the two being, that with regard to the one, the consent and approbation of the people is signified by their immemorial use and practice, whilst, with regard to the other, their approbation and consent are declared by parliament, to whose acts the people generally are deemed to be virtually parties. The custom of the realm, as above described, from the circumstance of its being the common or ordinary law of the land, as formerly administered between man and man, is denominated the *common law* of the realm, and under

which denomination is comprised all the law of this country, excepting the statute law. The custom of the realm, or *common law*, as it is termed, includes not only *general* customs, or such as are common to the whole kingdom, but also the *particular* customs which prevail in certain parts of the kingdom, as well as those *particular* or peculiar laws that are by custom observed only in certain courts and jurisdictions. Thus the custom of *gavelkind* in Kent, which ordains, amongst other things, that not the eldest son only shall succeed to the inheritance, but all the sons alike, although at variance with the *general* law of the land, is yet deemed a part of the *common law*. So the civil and canon laws, as administered in our ecclesiastical and admiralty courts, having obligation in this kingdom, not upon their own intrinsic authority, but simply by custom, are also regarded as a part of the customs of the realm or common law.—See 1 *Reeves's Eng. Law*, 1, 2; *Hale's Hist. C. L.* 1, *et seq.*; 1 *Bl.* 64. 2ndly. The phrase *common law* is frequently used to express that department of the law of which the superior courts of law at Westminster take especial cognizance, and by which the proceedings and determinations in those courts are guided and directed, as distinguished from the principles and practice of equity, of which the Court of Chancery and the other equity courts take especial cognizance. The phrase *common law* is also frequently used in practice to signify the forensic proceedings and principles of our courts of common law, as opposed to some other practical department of the law, as, for instance, the conveyancing department, the chancery department, &c. 3rd. The phrase *at common law* signifies by the common law of the land, independently of the statute law, or without the statute law—according to the rules or principles of the common law, or custom of the realm, apart altogether from statute or act of parliament.

COMMON PLEAS (*communia placita*). One of the superior courts of common law, and is now usually held in Westminster Hall. The proceedings in this court are the same as those in the other courts of common law. See also tit. *Common Bench.*

COMMON RECOVERY. See tit. *Recovery.*

COMMON SERJEANT is a judicial officer attached to the corporation of the city of London, who assists the recorder in disposing of the criminal business at the Old Bailey sessions.

COMMON TRAVERSE. See tit. *Traverse.*

COMMON WEAL. Common or public good (*bonum publicum*).—*Plowd.* 25; *Cunningham.*

COMMONALTY (*populus*). In its general signification means the commoners of England, though some writers seem to suppose that it applies more to the middle class of society, i. e. to the better and more influential sort of commoners. The *commonalty* is also one of the component parts of an incorporated company; which usually consists of the masters, wardens, and *commonalty*; the two first being the chief officers or members, and the latter those who are usually called of the *livery*.—1 *Bl.* 402.

COMMORANCY (*commorantia*). The dwelling or living in any place as an inhabitant, which is termed being commorant therein.—4 *Bl.* 273.

COMMOTE. In Wales, half a *cantred* or hundred containing fifty villages.—*Dod. Hist. Wales, fol.* 2; *Cowel.*

COMMUNANCE. Those *commoners* or tenants who enjoyed the right of *common* or *commoning* in open fields were formerly so called.—*Cowel.*

COMMUNE CONCILIUM REGNI ANGLIÆ. The general council of the realm assembled in parliament. —*Cowel.*

COMMUNIA PLACITA NON TENENDA IN SCACCARIO. A writ directed to the treasurer and barons of the Exchequer, forbidding them to hold pleas between *common* persons in that court.—*Reg. of Writs*, 187; *Cowel.*

COMMUNI CUSTODIA. A writ which lay for a lord (whose tenant, holding by knight service, died, and left his eldest son under age) against a stranger who entered the land and obtained the ward of the body.—*Old Nat. Brev. fol.* 89; *Cowel.*

COMPANAGE (Fr.) Any kind of food excepting bread and drink. Some tenants of the manor of Feskerton, in the county of Nottingham, when they performed their boons or work days to their lord, had three boon loaves with companage allowed them.—*Cowel.*

COMPELLATIVUM. An accuser, an adversary.—*Leg. Athelstan; Cowel.*

COMPERTORIUM. In the civil law signifies a judicial inquest made by delegates or commissioners to find out and relate the truth of a cause.—*Ken. Paroch. Antiq.; Cowel.*

COMPERUIT AD DIEM (*he appeared at the day*). The name of a plea in an action of debt on a bail bond.

COMPOSITION (*compositio*). A *composition*, or, as it is termed, a *real composition*, is an agreement made between the owner of lands and a parson or vicar, with the consent of the ordinary and the patron, that such lands shall for the future be discharged from payment of tithes by reason of some land or other real recompense given to the parson, in lieu or satisfaction thereof.—2 *Bl.* 28.

COMPOSITIO MENSUARUM. The title of an ancient ordinance for *measures.*—23 *Hen.* 8, *c.* 4.

COMPOUNDING FELONY, or THEFT-BOTE. Where a person has been robbed, and he knows the felon, and receives back from him his goods that were stolen, or some other amends, upon agreement not to prosecute.—4 *Bl.* 133.

COMPRINT. The surreptitious printing of another bookseller's copy, to make gain thereby, and which is not only contrary to the common law, but is also forbidden by statute.—*Cowel.*

COMPROMISE (*compromissum*). The mutual promise of two or more parties at difference to refer their controversy to the arbitrament or decision of an arbitrator.—*West. par.* 2, *Symb.*; *Cowel.*

COMPTROLLER. An officer who has the inspection, examination, or controlling of the accounts of collectors of public money.—*Cowel.*

COMPURGATORS. Persons who swear they believe the oath of another person made in defence of his own innocence. Such was the case with the popish clergy, who, when accused of any capital crime, were not only required to make oath of their own innocence, but also to produce a certain number of persons, called *compurgators*, to swear that they believed his oath.—3 *Bl.* 342.

COMPUTASSENT. See tit. *Insimul Computassent.*

COMPUTE, *Rule to.* In cases where the plaintiff has an interlocutory judgment, and the amount of damages is a matter of simple arithmetical calculation, and no evidence is required to ascertain the amount, beyond what is apparent on the face of the pleadings, the court, instead of putting the plaintiff to execute a writ of inquiry, will refer it to the master to compute principal and interest. This course is usually pursued when interlocutory judgment has been signed in an action on a bill of exchange or promissory note or banker's cheque. The courts, in the first instance, grant a rule to show cause why it should not be referred to the master to compute principal and interest, &c.; which rule has to be served upon the defendant, and if cause is not shown, they subsequently make the rule absolute.—*Bagley's Pr.* 221; *Lush's Pr.* 706.

COMPUTO. A writ so called, because it compels a bailiff, receiver, or chamberlain, to yield up his accounts, and to *compute* what is owing.—*Old Nat. Brev. fol.* 58; *Cowel.*

CONCEALORS (*concelatores*). Those persons who discover *concealed* lands, i. e. lands that are privily kept from the king by common persons, having no title or estate therein.—39 *Eliz. c.* 22; *Cowel.*

CONCESSI (*I have granted*). A word frequently used in conveyances, creating a covenant in law, as the word *dedi* (*I have given*) does a warranty.—*Co. Lit.* 384; *Cowel.*

CONCIONATOR. A common councilman.—*History Elein.; Cowel.*

CONCLUDE, To. The word *concluded* seems, in legal language, to mean prevented, estopped, or rather shut out.—See 2 *Wms. Saund.* 291 *c*; 1 *Gale & D.* 240.

CONCLUSION (*conclusio*). When a man by his own act upon record has charged himself with a duty or other thing; as in the case of a freeman confessing himself to be the villein of another, and afterwards such other takes his goods, he shall be *concluded* from saying in any action or plea afterwards that he is free, by reason of his own confession. The word *conclusion*, as used in reference to declarations, pleas, replications, &c. retains its common signification, meaning the end or conclusion of the respective pleading to which it refers.—*Les Termes de la Ley; Cowel.*

CONCLUSION OF LAW. A conclusion or result at which the law arrives by the application of legal rules or principles to any given state of facts; a familiar instance of which is afforded by the numerous cases in which the law *concludes* that a promise to pay a certain sum of money is binding upon a party from whose conduct such promise may be implied. So when A. does any given act as agent for B., the conclusion of law is, that B. did such act, upon the principle that *qui facit per alium facit per se.*

CONCLUSION TO THE COUNTRY. When a party in pleading traverses or denies a material fact or allegation advanced by his opponent, he usually concludes his pleading with an offer that the issue so raised may be tried by a jury: this he does by stating that he "puts himself upon the country;" and a pleading which so concludes, is then said to conclude to the country; and the technical phrase itself is termed a "*conclusion to the country.*"

CONCORD (*concordia*). An agreement entered into between two or more persons, upon a trespass having been committed, by way of amends or satisfaction for the trespass. In that species of conveyance which was formerly in use, called a *fine*, the word *concord* also occurs; and here it signifies an agreement between the parties, who are levying the fine of lands one to another, how and in what manner the lands shall pass; and is usually an acknowledgment from the deforciants (or those who keep the other out of possession) that the lands in question are the right of the complainant; and from this *acknowledgment* or *recognition* of right, the party levying the fine is called the *cognizor*, and he to whom it is levied the *cognizee*.—2 *Bl.* 350.

CONCUBEANT. Lying together.—1 *Hen.* 2, *c.* 6; *Tomlins.*

CONCUBINAGE (*concubinatus*). An exception against a woman who sues for dower, thereby alleging that she was not a wife lawfully married to the party, from whose lands she seeks to be endowed, but only his concubine.—*Brit. c.* 107; *Cowel.*

CONDEMNATION MONEY. The party who fails in a suit or action is sometimes said to be *condemned* in the action, and the damages to which such failure has made him liable are hence frequently called *condemnation money*. Thus in proceedings to enforce a recognizance by writ of *scire facias*, it is laid down that "these persons (the bail) stipulated that if the defendant should be condemned in the action, he should pay the *condemnation money* or render himself into custody."—*Smith's Action at Law*, 120.

CONDITION (*conditio*). A kind of stipulation or restraint annexed to a thing; and in its general signification bears the same meaning as it does in common language. The word *condition* is, however, in law usually associated with the word *estate*, as an estate upon *condition*; it will, therefore, be necessary to consider the various sorts of *estates upon condition*, or, in other words, the various sorts of *conditions* that are annexed to and qualify certain estates. Estates, then, upon condition, thus understood, are of two sorts. 1. Estates upon *condition implied*; 2, Estates upon *condition expressed*. Estates upon *condition implied* in law are where a grant of an estate has a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words. As if a grant be made to a man of an office generally, without adding other words, the law tacitly annexes thereto a secret condition, that the grantee shall duly execute his office, on breach of which condition it is lawful for the grantor, or his heirs, to oust him and grant it to another person. An estate on *condition expressed* in the grant itself, is where an estate is granted either in *fee simple or otherwise*, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification or condition. These conditions are therefore either *precedent* or *subsequent*. *Precedent* are such as must happen or be performed before the estate can vest or be enlarged. *Subsequent* are such, by the failure or non-performance of which an estate already vested may be defeated. Thus, if an estate for life be limited to A. upon his marriage with B., the marriage is a precedent condition, and till that happens no estate is vested in A. Or if a man grant to his lessee for years, that upon payment of a hundred marks within the term, he shall have the fee, this also is a *condition precedent*, and the fee simple passes not till the hun-

dred marks be paid. But if a man grant an estate in fee simple, reserving to himself and his heirs a certain rent, and that if such be not paid at the times limited, it shall be lawful for him and his heirs to re-enter, and avoid the estate; in this case the grantee and his heirs have an estate upon condition subsequent, which is defeasible if the condition be not strictly performed.—2 *Bl.* 152 *to* 154.

CONDITION PRECEDENT. An act essential to be performed by one party prior to any obligation attaching upon another party to do or perform another given act. It has also been defined to be "an act to be performed by the plaintiff before the defendant's liability is to accrue under his contract.—*Chitty on Cont.* 738. Thus, where the purchaser of a house agreed to pay a certain sum of money, provided the pavement in front of the adjoining houses should be laid down by a given day; the *completion of the pavement by the specified time* was a *condition precedent* to the purchaser being called upon for payment of the money, i. e. it was an act which was essential to be performed prior to any liability accruing against the purchaser to pay the money.—4 *Car. & P.* 295; 1 *Saund.* 320, *n.* 4.

CONDITIONAL FEE. A fee or estate restrained in its form of donation to some particular heirs exclusive of others, as to the heirs of a *man's body*, by which only his lineal descendants were admitted in exclusion of collateral heirs, or to the heirs *male of his body*, in exclusion both of collaterals and lineal females also. We say restrained in the *form of donation*, for the gift was not considered as in *effect* restrained to the particular heirs, but was construed by the judges of former days as conferring an estate descendible to the heirs general, subject only to the performance of a certain condition on the part of the ancestor. For they held that such a gift (to a man and the heirs of his body) was a gift upon condition that it should revert to the donor if the donee had no heirs of his body; but if he had, it should remain to the donee. Immediately, therefore, issue was born, the donee was enabled to aliene the land, and he usually did so at once; for if the issue had afterwards died, and then the original donee had died without making any alienation, the land would have descended subject to the restriction of the gift, and in default of heirs of the donee's body, must have reverted to the donor. But by an alienation of the land immediately upon the birth of issue and a subsequent repurchase, the donee became possessed of a fee simple absolute. From these "conditional fees" and the construction put upon them under the Statute of Westminster the Second (*De Donis Conditionalibus*, 13 Ed. 1, c. 1), arose that more familiar form of estate known as an "estate in fee tail" or an "estate tail."—1 *Stephen's Bl.* 228, 229.

CONDONATION. A technical term, used in the ecclesiastical courts to signify the *forgiving* by a husband or wife of a breach, on the part of the other, of his or her marital duties. The legal effect of which forgiving or *condonation* is, that the party cannot subsequently seek redress for an offence already forgiven. For instance, if after his knowledge of the wife's adultery, a husband cohabits with her, such an act of *condonation* bars him from his remedy of divorce; and a wife is equally barred who has condoned an act of cruelty on the part of the husband. It is an important exception, however, to the general doctrine of condonation, which is founded on a willingness to heal the disputes of married life, that a subsequent repetition of the crime revives the former offence, and nul-

lifies the intermediate act of condonation by the injured party. — 1 *Ough.* 317; *Burn's Eccl. Law, tit. Marriage.*

CONDUCT MONEY. Money paid to a witness, who has been subpœnaed on a trial, sufficient to pay the reasonable expences of going to, staying at, and returning from the place of trial. These expences are estimated according to the rank in life of the party, the state of his health at the time, and other similar circumstances.—*Lush's Pr.* 460.

CONE AND KEY. A woman when arrived at the age of fourteen or fifteen years had liberty to take charge of her house, and, as it was termed, to receive *cone and key*, i. e. she was then considered competent to keep the accounts and keys of the house.—*Bracton, lib.* 2, *c.* 37; *Cowel.*

CONFEDERACY. Two or more persons combining together to do any hurt or damage to another, or to do any other unlawful act.

CONFERENCE. In reference to the proceedings of Parliament, is a meeting of the two Houses for the purpose of considering (or *conferring* upon) any point or measure on which they differ. It is conducted by a few members of each House, who are appointed as *managers of the conference.* The managers of both Houses assemble at a time and place appointed by the Lords (whose privilege this is), and usually one manager on each side states and argues the case for his own party. At all conferences the managers for the Upper House are seated, and wear their hats, while the Commons' managers stand uncovered. Frequently reasons in writing, in support of their own view, are furnished by one set of managers to the other.

CONFESS AND AVOID. See tit. *Confession and Avoidance.*

CONFESSION (*confessio*). This word in the law retains its usual and popular signification. Thus, when a prisoner is indicted of treason and felony, and brought to the bar to be arraigned, and the indictment being read to him, and the court demanding what he can say thereto, he *confesses* the offence and indictment to be true, or pleads *not guilty.* The word *confession* is also used in civil matters, as where a defendant *confesses* the plaintiff's right of action by giving him a *cognovit*, &c.—3 *Bl.* 397.

CONFESSION AND AVOIDANCE. Pleadings *in confession and avoidance* are those in which the party pleading admits or *confesses*, to some extent at least, the truth of the allegation he proposes to answer, and then states matter to *avoid* the legal consequence which the other party has drawn from it. Of pleas of this nature, some are distinguished as pleas in *justification* or *excuse*, others as pleas in *discharge.* The former show some justification or excuse of the matter charged in the declaration, the latter some discharge or release of that matter. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful; whilst the latter show that though he once had a right of action, it is discharged or released by some matter subsequent. Of those in justification or excuse, the plea of *son assault demesne*, in an action of trespass for assault and battery (wherein the defendant alleges that the assault complained of was committed in self-defence against the attack of the plaintiff) is an instance; and a common example of those in discharge is, in an action of covenant, a plea of release, wherein the defendant alleges that the plaintiff had, after the breach, released him

from all breaches, &c. This division applies to *pleas* only, and not to replications or subsequent pleadings. *Stephen on Pl.* 229. See tit. *Colour.*

CONFESSO. Bill taken *pro confesso.* See tit. *Pro confesso.*

CONFIRMATION (*confirmatio*). A confirmation is of a nature nearly allied to a release, and is defined by Sir Edward Coke to be a conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable; or whereby a particular estate is increased; and the words of making it are these, "have given, granted, ratified, approved, and confirmed." An instance of the first branch of the definition may be illustrated in the case of a tenant for life leasing for forty years and dying during the term; here the lease for years is voidable by him who has the reversion, yet if he has *confirmed* the estate of the lessee for years, before the death of the tenant for life, it is then no longer voidable but sure.—2 *Bl.* 325.

CONFISCATE (*confiscare*). As the Romans say, when for any offence goods are forfeited to the Emperor's treasury, that they are *bona confiscata;* so we apply the same term to those goods that are forfeited to our king's exchequer.—*Staundf. Pl. Cr.; Cowel.*

CONGEABLE (Fr. *conge*, leave or permission). Lawful, lawfully done, or done with leave; as the entry of the disseisee is *congeable*, i. e. lawful. —*Cowel.*

CONGE D'ACCORDER. Leave to accord or agree. In the statute of fines it is thus mentioned. "When the original writ is delivered in presence of the parties before the justices, a pleader shall say this, *Sir Justice conge d'accorder*, and the justice shall reply to him, *What saith Sir R.?* and shall name one of the parties."—18 *Eliz.* 3; *Cowel.*

CONGE D'ESLIRE (*leave to elect*). The royal license or permission sent to a dean or chapter when any bishopric becomes vacant, empowering them to proceed to the election of a new bishop.—1 *Bl.* 382.

CONJURATIO. An oath; and the word *conjuratus* signifies the same as *conjurator*, i. e. one who is bound by an oath.—*Mon. tom.* 1, *p.* 207; *Cowel.*

CONJURATION (*conjuratio*). A plot or compact made by persons combining together by oath or promise to do some public harm; but in its more ordinary sense it signifies the offence of enchantment, witchcraft, or sorcery.—4 *Bl.* 61.

CONQUEST (*conquæstus*). It is said by Blackstone to signify in its feodal acceptation *acquisition.*—2 *Bl.* 48.

CONSANGUINEO. The name of a writ mentioned in *Reg. Orig.* 226; *Cowel.*

CONSANGUINEUS FRATER. A brother by the father's side. 2 *Bl.* 232.

CONSANGUINITY or KINDRED (*consanguinitas*). Relationship by *blood*, in contradistinction to *affinity*, which is relationship by *marriage.*—1 *Bl.* 434.

CONSCIENCE, *Courts of.* Courts of conscience, or, as they are otherwise called, *courts of request*, are courts constituted by act of parliament in the city of London and other commercial districts, for the recovery of small debts. They are constituted of two aldermen and four common-councilmen, who sit twice a week to hear all causes of debt not exceeding the value

of forty shillings, which they examine in a summary way, by the oath of the parties or other witnesses, and make such order therein as is consonant to equity and good *conscience*.—3 *Bl.* 81.

CONSENT OF THE CROWN. In cases where the proceedings of Parliament may interfere with the rights or prerogatives of the Crown, by the provisions of any particular bill introduced into either branch of the legislature, it is necessary to obtain the consent of the crown before such bill can pass through any of its stages.

CONSERVATOR. A delegated umpire, arbitrator, or third person, chosen to adjust differences between two contending parties. It also signifies a protector or preserver.—*Kennet's Paroch. Ant.; Cowel.*

CONSERVATOR OF THE PEACE. A preserver of the peace. All officers who in any way have to keep the peace are *conservators of the peace*.—4 *Bl.* 413.

CONSERVATORS OF TRUCE AND SAFE CONDUCTS. Were officers who were appointed in every port for the hearing and determining causes arising from the violation of *safe conducts* or *passports*, or from the commission of acts of hostility against such as are in amity, league, or *truce* with us, and who are in this country under a general implied *safe conduct*. And they were also empowered to hear and determine such treasons committed at sea, according to the ancient marine law then practised in the admiral's court.—4 *Bl.* 68, 69.

CONSIDERATIO CURIÆ (*the consideration of the Court*). This phrase used frequently to occur in our pleadings. *Ideo consideratum est per curiam*, i. e. therefore it is considered (or adjudged) by the court.—*Cowel.*

CONSIDERATION (*consideratio*). This word, as applied to contracts, generally signifies the thing given in exchange for the benefit which is to be derived from such contract. Thus when A. purchases an estate of B., the money which A. gives to B. in exchange for his estate is the *consideration* for which such purchase was made. Indeed the word as used in law retains its common and usual signification. Thus, in common *parlance* a person might say "on *consideration* of your not revealing such a secret, I will give you five pounds;" here the preserving of secrecy is the *consideration* upon which the promise to pay the five pounds is founded; and precisely the same is it in law proceedings; as when I grant a man a lease of a house at 50*l. per annum*, here the annual rent of 50*l.* is the *consideration* for my granting him the lease. And a *consideration* of some sort or other is so absolutely necessary to the forming of a contract, that an agreement to do or pay anything on one side, without any adequate compensation on the other, is either totally void, or voidable in law. This thing, which is the price or motive of the contract, is therefore called the *consideration*, and it must be a thing in itself lawful, or else the contract is void.—2 *Bl.* 442, 443, 444.

CONSIGNEE. The person to whom goods are *consigned* or delivered over.—*Lex Mercat.; Tomlins.*

CONSIGNMENT. The act of delivering or *consigning* goods to a *consignee*.

CONSILIUM (*dies consilii*). The time allowed for an accused party to make his defence and answer the charge of the accuser. It is generally used now for an early day appointed to argue a *demurrer*, which is usually granted by the court after

demurrer joined, upon reading the record of the cause.—*Cowel*; 4 *Bl.* 356.

CONSIMILI CASU. See *Casu consimili.*

CONSISTORY (*consistorium*). Nearly the same meaning as *prætorium* or tribunal. The *Consistory Court* of every diocesan bishop is held in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses. The bishop's chancellor or his commissary is the judge; and from his sentence an appeal lies by virtue of the same statute to the archbishop of each province respectively.—3 *Bl.* 64.

CONSISTORY COURT. See tit. *Consistory.*

CONSOLIDATED FUND. See tit. *Fund, Consolidated.*

CONSOLIDATION (*consolidatio*). As applied to benefices it signifies the uniting of two benefices into one.—*Cowel*; 37 *H.* 8, *c.* 21.

CONSPIRACY (*conspiratio*). This word, as used in 33 Edw. 1, cap. 2, signifies an agreement of those who bind themselves by oath or other alliance to aid each other falsely and maliciously to indict men of felony, and so occasion them to be imprisoned, &c.

CONSPIRATIONE. A writ that formerly lay against conspirators.—*Cromp. Jurisd.* 209; *Cowel.*

CONSPIRATORS. Persons guilty of a conspiracy. See *Conspiracy.*

CONSTABLE. The word *constable* has been said to be derived from the Saxon language and to signify the support of the king; but others have with greater reason supposed it to be derived from the Latin *comes stabuli*, an officer who among the Romans used to regulate all matters of chivalry, tilts, tournaments, and feats of arms, &c. *The Constable of England*, or *Lord High Constable*, as he was called, was an officer of high dignity and importance in this realm about the time of Henry the Eighth; but since that period it has been disused in England except on great and solemn occasions. He was then the leader of the king's armies and had the cognizance of all matters connected with arms and war. He also sometimes exercised judicial functions in the court of chivalry, where he took precedence of the earl marshal. The constables however to which we more immediately refer now are of two sorts, *high constables* and *petty constables*; the former are appointed at the court leets of the franchise or hundreds over which they preside, or in default of that by the justices at the quarter sessions; and are removeable by the same authority that appoints them. They have the superintendence and direction of all petty constables within their district, and are in some measure responsible for their conduct. They have also the surveying of bridges, the issuing of precepts concerning the appointment of overseers of the poor, of surveyors of the highways, of assessors and collectors of taxes, &c. The duties of petty constables are subordinate to those of the high constable and of a less important character. There are also *Constables of Castles*, who are governors or keepers of the same, and whose office is usually honorary.—1 *Bl.* 355.

CONSTAT. The name of a certificate which the clerk of the pipe and auditors of the Exchequer make at the request of any person who intends to plead or move in that court for the discharge of any thing; and

the purport of it is to certify what *constat* (appears) on record concerning the matter in question.—3 & 4 *Edw.* 6, *c.* 4; *Cowel.*

CONSUETUDINARIUS. A book containing the rites and forms of divine offices, or the customs of abbies and monasteries.—*Brompton; Cowel.*

CONSUETUDINIBUS ET SERVITIIS. A writ which lies for the lord against his tenant, who withholds from him the rents and services due by custom or by tenure for his land.—*F. N. B.* 151; 3 *Bl.* 231.

CONSUL. In the law, an earl.—*Cowel.*

CONSULTA ECCLESIA. A church full or provided for.—*Cowel.*

CONSULTATION (*consultatio*). When a party to a suit in one of the inferior courts has obtained a writ of prohibition from one of the superior courts prohibiting such inferior court from proceeding further in the matter, and if such superior court shall finally after demurrer and argument be of opinion that there was no competent ground for having so restrained such inferior jurisdiction, then judgment shall be given against him who applied for the prohibition in the superior court, and a writ of *consultation* shall be awarded; so called because, upon deliberation and *consultation* had, the judges find the prohibition to be ill founded, and therefore by this writ they return the cause to its original jurisdiction, to be there determined in the inferior court.—3 *Bl.* 113.

CONTEMPT (*contemptus*). Contempt of court signifies a disobedience to the rules, orders, or process of a court. See *Commission of Rebellion.*

CONTENEMENT (*contenementum*). This word will be better understood by giving an example of its use, than by attempting to define it, especially as writers are not agreed upon the meaning of the word. "No man shall have a larger amercement imposed upon him than his circumstances or personal estate will bear; saving to the land-holder his *contenement*, or land; to the trader his merchandize; and to the countryman his wainage or team and instruments of husbandry." It would appear from the above that the word *contenement* signifies *means of support*, i. e. the land, tenements, and appurtenances are the same to the land-holder as the merchandize is to the merchant.—*Blount; Spelm.*

CONTENTS AND NOT CONTENTS. In the House of Lords the members express their assent to a motion by saying "content," and dissent from it by saying "not content," as the Commons do the same thing by saying "aye" or "no."

CONTENTIOUS JURISDICTION. The litigious proceedings in ecclesiastical courts are sometimes said to belong to its *contentious* jurisdiction, in contradistinction to what is called its voluntary jurisdiction, which is exercised in the granting of licenses, probates of wills, dispensations, faculties, &c.—3 *Bl.* 66.

CONTINGENT LEGACY. See *Legacy.*

CONTINGENT REMAINDER. See *Remainder.*

CONTINGENT USE. See *Use.*

CONTINUAL CLAIM. See *Claim Continual.*

CONTINUANCE. Anciently

the parties in an action, or their attornies for them, used to appear in open court; the plaintiff's advocate stated his cause of complaint *vivâ voce*; the defendant's advocate his ground of defence; the plaintiff's advocate replied; and the altercation continued till the two parties came to contradict one another, or, as it was termed, to *issue*. If this issue was upon a point of law, the judges decided it; if upon a point of fact, it was tried by a jury, or by one of the other modes which prevailed at that period. While this was going on, the officers of the court, who sat at the feet of the judges, took a written minute of the proceedings on a parchment roll, which was called *the record*, and was preserved as the official history of the suit, and that alone, the correctness of which could be afterwards recognized and depended on, was the only evidence of the matters stated there, and the court would not allow it to be contradicted. As the proceedings generally occupied more days than one, the court used to adjourn them from time to time; if these adjournments, which were called *continuances*, were not made, the suit was at an end, since there was no period at which either party had a right again to call the court's attention to it; and if the *continuance*, though made, were not entered on the record, the suit was equally at an end, since the record was the only evidence the court would admit of the fact of the *continuance*. In such a case the action was said to be *discontinued*. And now when a cause is put down in the list of causes to be tried at a certain time, and from some cause or other it is not then tried, but is adjourned, a minute of such adjournment is entered on the record, which is technically termed entering a *continuance*, because such entry signifies that the cause is not yet finished but *continues* pending.—*Smith's Action at Law*, p. 52. This practice of entering continuances is by a late rule of court abandoned.

CONTINUANDO (*by continuing*). In trespasses of a permanent nature, where the injury is continually renewed (as by spoiling or consuming the herbage with the defendant's cattle) the declaration may allege the injury to have been committed by *continuation* from one given day to another, which is called laying the action with a *continuando*, and the plaintiff shall then not be compelled to bring separate actions for every day's separate injury.—3 *Bl.* 212; 2 *Roll. Abr.* 545.

CONTRACAUSATOR. A criminal, or one prosecuted for a crime.—*Cowel.*

CONTRACT. A covenant or agreement between two or more persons with a lawful consideration.—*West, Symb.*; *Cowel.* See also tit. *Simple Contract.*

CONTRACTU, *Actions ex.* Are actions founded upon a contract either express or implied; express, when entered into and its terms agreed upon by the parties themselves; implied, when arising out of their legal relation or conduct. Such actions are distinguished from actions *Ex delicto*, which title see.

CONTRAFACTION (*contrafactio*). The act of counterfeiting. *Contrafactio* sigilli regis, i. e. *counterfeiting* the king's seal.—*Cowel.*

CONTRA FORMAM COLLATIONIS. A writ that lay where a man had given lands in perpetual alms to any lay houses of religion, as to an abbey or convent, &c. and they aliened the land, to the disherison of the house and church, then the donor or his

heirs had this writ to recover the lands.—*Reg. Orig.* 238; *Cowel.*

CONTRA FORMAM FEOFFAMENTI. A writ that lay for the heir of a tenant who was enfeoffed of certain lands or tenements by charter of feoffment from a lord to pay certain suits and services to his court, and who was afterwards distrained for more than was contained in the said charter.—*Reg. Orig.* 176; *Cowel.*

CONTRA FORMAM STATUTI (*contrary to the form of the statute*). This is the usual conclusion of indictments laid on an offence created by statute.—*Tomlins.*

CONTRAMANDATIO PLACITI. It seems to signify a respiting or giving a defendant further time to answer. An imparlance or a countermand of what had been previously ordered.—*Cowel.*

CONTRAMANDATUM. A lawful excuse which the defendant by his attorney alleges for himself, to show that the plaintiff has no cause to complain. *Si dies placiti sit* contramandatus.—*Leges H.* 1, *c.* 59.

CONTRAPOSITIO. A plea or answer.—*Cowel; Leg. H.* 1, *c.* 34.

CONTRARIENTS. A name of reproach applied to the Earl of Lancaster and his followers, who, in the reign of Ed. 2, took part against the king. To call them rebels or traitors was thought too derogatory for persons of such rank.—*Cowel.*

CONTRATENERE. To withhold.—*Leg. Alfr.*

CONTRIBULES. Kindred.—*Cowel.*

CONTRIBUTION. Retains, in law, its ordinary signification, and signifies the relief or reimbursement by one man of the loss or payments of another. And this contribution the law insists upon in certain cases; 1st, in the case of *general average*, which is a term used to express the *contribution*, which by the commercial law of every country of Europe is made by the proprietors in general of ship, cargo and freight, towards the loss sustained by any individual of their number whose property has been voluntarily sacrificed for the common safety, and by the loss of which the ship has been saved.—*Park, Ins.* 121; 1 *East*, 220; 3 *M. & S.* 482; 4 *M. & S.* 149. See tit. *Average.* 2nd. Contribution is also due to and may be enforced by one surety or joint contractor, who has been obliged to satisfy the whole demand from his fellow surety or contractor, proportionate to the original liability of each, but it is otherwise between partners and wrongdoers.—1 *Smith, L. C.* 71.

CONTRIBUTIONE FACIENDA. A writ that lay where several tenants in common were bound jointly to do something, and yet the burden was thrown upon one of them, the others refusing to do their share; and this writ was to compel them to do their part.—*Reg. Orig.* 671; *Cowel.*

CONTROLLER. See *Comptroller.*

CONTROVER. An inventor or devisor of false news.—2 *Inst.* 227.

CONTROVERTED ELECTIONS. A controverted election is an election which has resulted in the return of one or more members of parliament, the validity of whose return is disputed by the opposing candidate or candidates, on the grounds of bribery, corruption, treating, want of proper qualification, or other causes. The course open to the defeated candidate, who has reason to suppose that his antagonist has not obtained a

majority of votes by fair means, is to petition the House of Commons, upon which a committee of selected members tries the petition by examining witnesses through counsel, and if the allegations contained in the petition be sustained and proved, the first returned member is unseated, and either the petitioner himself declared duly elected, or a writ issued for a fresh election, according to the circumstances of the case.

CONVENABLE. Suitable, convenient, or fitting.—2 *H.* 6, *c.* 2; *Cowel.*

CONVENTIO. In law pleadings an agreement or covenant.—*Cowel.*

CONVENTION. An assembled parliament, before any act is passed or bill signed.—*Cunningham.* But it seems to be rather applied to the meeting of the houses of parliament without the assent of the king: as the *convention* parliament which restored King Charles the Second to the throne, and which assembled some time before his return; the lords by their own authority, and the commons in pursuance of writs issued in the name of the keepers of the liberty of England by authority of parliament.—1 *Bl.* 151.

CONVENTIONE. A writ of covenant which lay for the non-performance of any covenant in writing.—*Reg. Orig.* 185; *Cowel.*

CONVENTUAL CHURCH. A church consisting of regular clerks professing some order of religion, or of a dean and chapter, or other such society of ecclesiastics.—*Cowel.*

CONVENTUALS. A society of religious men united together in some religious house.—*Cowel.*

CONVERSION. An action of *trover* and *conversion* is an action for recovery of damages against such person as had *found* another's goods and refused to deliver them on demand, but *converted* them to his own use; from which finding and converting it is called an action of trover and conversion.—3 *Bl.* 152.

CONVEYANCE. An instrument of alienation by which an interest or estate in lands and tenements is conveyed from one person to another. The principles upon which these instruments are framed, together with the rules and principles applicable to the alienation or disposal of real property, constitute that branch or department of the law popularly termed *conveyancing*; and the learned gentlemen who confine their practice to this department are thence denominated *conveyancers.*

CONVEYANCER. See tit. *Conveyance.*

CONVEYANCING. See tit. *Conveyance.*

CONVICT. He who is found guilty of an offence by the verdict of a jury.—*Staunf. Pl. Cr.*; *Cowel.*

CONVICT RECUSANT. He who had been legally presented, indicted, and convicted for refusing to come to church to hear the common prayer according to the several statutes of Eliz. and Ja.

CONVICTION. A conviction is defined to be a record of the summary proceedings upon any penal statute, before one or more justices of the peace, or other persons duly authorized, in a case where the offender has been convicted and sentenced; and consists, *first*, of an information or charge against the defendant; *secondly*, of a summons or notice of such information, in order that he may make his defence; *thirdly*,

his appearance, or non-appearance; *fourthly*, his defence or confession; *fifthly*, the evidence against him in case he does not confess; and *sixthly*, the judgment or adjudication.—*Boscaw. Pen. Con.* 7; *R.* v. *Green, Cald. Cas.* 396, 397.

CONVIVIUM. A condition annexed to a certain tenure, whereby the tenants are bound to provide meat and drink for their lord once or oftener in every year. It is the same amongst the laity as *procuratio* is among the clergy.—*Selden in Eadmer*, 150; *Cowel.*

CONVOCATION (*convocatio*). An ecclesiastical assembly, consisting of the representatives of the clergy of the two provinces of Canterbury and York, convened for the purpose of consulting on ecclesiastical matters in time of parliament.—*25 H. 8, c.* 19; *Cowel.*

CONUSANCE OF PLEAS. This is a privilege or right vested in the lord of a franchise to hold pleas; or a privilege granted to a great city that the inhabitants thereof shall be sued within their city.—*5 Vin. Abr.* p. 569.

CONUSANT (Fr. *connaissant*). Knowing, privy to, understanding. Thus, if a son be *conusant*, and agree to the feoffment, &c.—*Co. Lit.* 159.

COPARCENARY. An estate held in coparcenary is where lands of inheritance descend from the ancestor to two or more persons. It arises either by common law or particular custom. By common law, as where a person seised in fee-simple or in fee-tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives, in this case they shall all inherit; and these coheirs are then called *coparceners*, or sometimes parceners only, though in some points of view the law considers them as together making only one heir. Coparceners by particular custom are where lands descend, as in gavelkind, to all the males in equal degrees, as sons, brothers, uncles, &c. —*Co. Litt.* 163 *b*; *Vin. Ab. Parceners* (2); 1 *Stephen's Bl.* 319.

COPARCENERS. See tit. *Coparcenary.*

COPARTNERSHIP. Same as *Partnership.*

COPE. In Domesday book it is said to signify a bill; but it also signifies a custom or tribute due to the lord of the soil or to the king out of the lead mines in some parts of Devonshire.—See tit. *Lot and Cope.*

COPIA LIBELLI DELIBERANDA. A writ that lay for a man when he could not get the *copy of a libel delivered* to him from the hands of the ecclesiastical judge.—*Reg. Orig.* 51; *Cowel.*

COPYHOLD (*tenura per copiam rotuli curiæ*). A copyhold estate is an estate the only visible title to which is the *copy of the court rolls*, which are made out by the steward of the manor on a tenant's being admitted to any parcel of land or tenement belonging to the manor. To illustrate the word it will be necessary to give an outline of the origin of these estates, which is as follows: On the arrival of the Normans in England, there was a certain inferior and miserable class of persons called *villeins*, who were employed in rustic works of the most sordid kind. These villeins belonged chiefly to the great lords of manors, and held small portions of land by way of sustaining themselves and families; but this was at the mere will of the lord, who might dispossess them whenever he pleased; and they held this land

deodand has accrued to the king, or the lord of the franchise, by this death; and must certify the whole of this inquisition under his own seal and the seals of his jurors, together with the evidence thereon, to the Court of King's Bench, or the next assizes. Another branch of his office is to inquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods. Concerning *treasure trove* he is also to inquire who were the finders, and where it is, and whether any one be suspected of having found and concealed a treasure.—1 *Bl.* 348, 349.

CORONER OF THE KING'S HOUSE (usually called coroner of the verge). An officer appointed by the lord steward, or lord great master of the king's house for the time being. His office resembles that of a coroner of a county, only that his duties are limited to such matters as occur within the verge or within the precincts of the king's palace.—1 *Chitty's Bl.* 347, *note* 20.

CORONE. This was the title to which all matters of the crown were formerly reduced; and were things that concerned treason, felony, and various other offences.—*Shep. Epit.* 367; *Tomlins.*

CORPORATION (*corporatio*). A corporation is defined to be an assembly and joining together of many into one fellowship or brotherhood, whereof one is the head or chief, and the rest are the body. They are also called bodies politic or corporate, because they are incorporated by act of parliament, *i. e.* made or united into one body. To illustrate these bodies politic or corporations, let us consider the case of a college in either of our universities founded *ad studendum et orandum*, for the encouragement and support of religion and learning. If this were a mere voluntary assembly, the individuals that compose it might read, pray, study, and perform scholastic exercises together, so long as they could agree to do so; but they could neither frame nor receive any laws or rules of their conduct; none at least which would have any binding force for want of a coercive power to create a sufficient obligation. Neither could they be capable of retaining any privileges or immunities; for if such privileges be attacked, which of all this unconnected assembly has the right or ability to defend them? And when they are dispersed by death or otherwise, how shall they transfer these advantages to another set of students equally unconnected as themselves? So also with regard to holding estates or other property, if land be granted for purposes of religion or learning to twenty individuals not incorporated, there is no legal way of continuing the property to any other persons for the same purposes, but by endless conveyances from one to another as often as the hands are changed. But when they are consolidated and united into a corporation, they and their successors are then considered as one person in law; as one person they have one will, which is collected from the sense of the majority of the individuals; this one will may establish rules and orders for the regulation of the whole, which are a sort of municipal laws of this little republic, or rules and statutes may be prescribed to it at its creation, which are then in the place of natural laws. The privileges and immunities, the estates and possessions of the corporation, when once vested in them, will be for ever vested, without any new conveyance to new successors; for all the individual members that have existed from the foundation to the present time, or that shall ever hereafter exist, are but one person in law, a person that never dies, in like manner as the river Thames is still

the same river, though the parts which compose it are changing every instant. The first division of corporations is into *aggregate* and *sole*. Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever; of which kind are the mayor and commonalty of a city, the head and fellows of a college, the dean and chapter of a cathedral church. Corporations *sole* consist of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which, in their natural persons, they could not have had. In this sense the king is a sole corporation, so is a bishop, so are some deans and prebendaries distinct from their several chapters, and so is every parson and vicar. Another division of incorporations, either sole or aggregate, is into *ecclesiastical* and *lay*. Ecclesiastical corporations are where the members that compose it are entirely spiritual persons, such as bishops, certain deans and prebendaries, all archdeacons, parsons, and vicars, which are sole corporations; deans and chapters at present, and formerly prior and convent, abbot and monks, and the like bodies aggregate. Lay corporations are of two sorts, *civil* and *eleemosynary*. The civil are such as are erected for a variety of temporal purposes, as for the good government of a town or particular district, as a mayor and commonalty, bailiff or burgesses or the like; and some for the better carrying on of divers special purposes, as churchwardens for conservation of the goods of a parish; the college of physicians and of surgeons in London for the improvement of medical science; the Royal Society for the advancement of natural knowledge, &c. The eleemosynary sort are such as are constituted for the perpetual distribution of the free alms or bounty of the founder of them to such persons as he has directed. Of this kind are all hospitals for the maintenance of the poor, sick, and impotent, and all colleges, both in our universities and out of them.—1 *Bl.* 467 to 471.

CORPOREAL HEREDITAMENTS. See *Hereditaments.*

CORPUS CUM CAUSA. A writ issuing out of chancery to remove both the body and the record touching the cause of any man lying in execution upon a judgment for debt, into the King's Bench, there to remain until he has satisfied the judgment.—*Fitz. Nat. Brev.* 251; *Cowel.*

CORRECTOR OF THE STAPLE. A clerk belonging to the staple, who wrote and recorded the bargains of merchants that were made there.—27 *Edw.* 3, *stat.* 3, *c.* 22, 23; *Cowel.*

CORREDIUM, COUREDIUM. The same as corrodium or *corody.*—*Cowel.*

CORRUPTION OF BLOOD. The immediate consequence of attainder is *corruption of blood*, both upwards and downwards; so that an attainted person can neither inherit lands or other hereditaments from his ancestors, nor retain those he already has, nor transmit them by descent to any heir, because his blood is considered in law to be corrupted.—4 *Bl.* 388.

CORSEPRESENT. It was anciently usual to bring a mortuary (or customary gift due to the minister on the death of a parishioner) to church along with the corpse when it came to be buried, and thence it was sometimes called a *corsepresent.* — 2 *Bl.* 425, 426.

CORSNED. A species of purgation which probably sprung from a pre-

sumptuous abuse of revelation in the darker ages, was the *corsned* or morsel of execration; being a piece of cheese or bread, of about an ounce in weight, which was consecrated with a form of exorcism; desiring the Almighty that it might cause convulsions and paleness, and find no passage, if the man was really guilty, but might turn to health and nourishment if he was innocent.—4 *Bl.* 345; *Spelm. Gloss.* 439.

COSDUNA. Custom or tribute.—*Mon. Ang. tom.* 1, *p.* 562; *Cowel.*

COSENAGE or COSINAGE (Fr. *cousinage*). A writ that lay where the *tresail* (*i. e.* the father of the *besail* or great grandfather) was seised of lands, &c. in fee on the day of his death, and afterwards a stranger entered and abated, and so kept out the heir.—*F. N. B.* 221; *Cowel.*

COSENING. An offence arising out of some deceitful act, whether in reference to a contract or not; and for which offence there is no recognised name.—*Cowel.*

COSHERING. A right or custom which the feudal lords imposed upon their tenants of sometimes lying and feasting themselves and their followers at their tenants' houses.—*Spelman of Parl. MS.; Cowel.*

COSTS. The expenses which are incurred either in the prosecuting or the defending an action are called the costs. Costs between *attorney and client* are those which the client always pays his attorney, whether such client is successful or not, and over and above what the attorney gets from the opposing party in case of such party having lost the action. Costs between *party and party* are those which the defeated party pays to the successful one as a matter of course. See tit. *Party and Party.*

COSTS OF THE DAY. Whenever one of the parties in an action (*i. e.* the plaintiff or defendant) gives notice of his intention to proceed to trial at a specified time, and after having given such notice, neglects so to do, or to countermand the notice within due time, he is liable to pay to the other party such costs or expenses as he has been put to by reason of such notice, which costs are commonly called the *costs of the day*, *i. e.* the costs or expenses which have been incurred on the day fixed (by such notice) for the trial. These costs usually consist of the expenses incurred by witnesses and others in coming to the place of trial, and such other expenses as have necessarily been incurred in preparing for trial on the specified day.—*Arch. Prac.; Lush's Prac.;* 6 *Jur.* 561.

COTERELLUS and COTARIUS, These words, according to *Spelman* and *Du Fresne*, signify servile tenants. But *Cowel* seems to think that there is a distinction not only in their name, but in their tenure and quality. For the *cotarius*, he says, had a free socage tenure, and paid a stated firm in provisions or money, with some occasional customary service; whereas the coterellus seemed to have held in mere villenage, and was subject to have his person and issue and goods disposed at the pleasure of his lord.—*Paroch. Antiq.* 310; *Cowel.*

COTLAND and COTSETHLAND. Land held by a cottager either in socage or in villenage.—*Paroch. Antiq.* 532; *Cowel.*

COTSETHUS. A cottager who by servile tenure was bound to work for the lord.—*Cowel.*

COUCHER or COURCHER. A factor who continues in some place or

country for traffic, as formerly in *Gascoign* for buying wines. It is also used for the general book in which any religious house or corporation registers their particular acts.—3 & 4 *Edw. 6, c.* 10; *Cowel.*

COUNSEL. A term frequently used to indicate *barristers at law*, which title see.

COUNSEL'S SIGNATURE. In former times the appearance of the parties to an action was actual and personal in open court, and the pleadings consisted of an oral altercation in presence of the judges. But this could be carried on by none but regular advocates (with the exception, as at the present day, of the party himself); and although the pleadings in an action are in the present day delivered in writing between the parties out of court, yet they are still *supposed* to be delivered orally as of old (at least for certain purposes), and when the pleadings contain any new affirmative matter, such as would formerly have been put forward by counsel on behalf of his client, they require to bear the signature of some counsel, or, in the Court of Common Pleas, of some serjeant.—2 *Dowl. N.S.* 226; *Step. on Pl.* 29.

COUNSELLOR. See *Barrister.*

COUNT. (Fr. *conte*, a narrative). In common law pleadings a section of a declaration is so called. Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same suit, subject to certain rules, which the law prescribes, as to joining such demands only as are of similar quality or character. Thus, he may join a claim of debt on bond with a claim of debt on simple contract, and pursue his remedy for both by the same action of debt. So, if several distinct trespasses have been committed, these may all form the subject of one declaration in trespass; but on the other hand, a plaintiff cannot join in the same suit a claim of debt on bond, and a complaint of trespass; these being dissimilar in kind. Such different claims or complaints, when capable of being joined, constitute different parts or sections of the declaration; and are known in pleading by the description of *several counts*. "It is worthy of notice," says Mr. Serjeant Stephen, "that in the law of Normandy this word *conte* had a more extensive meaning, and one therefore more conformable to its popular and original sense of *narrative*, than that which it now bears in the English law; being applied to *any* of the allegations of fact in the cause at whatever part of the pleading it might occur." The word *count* is also used in real actions, as the name for the whole declaration.—*Stephen on Pleading, p.* 295, *and Appendix.*

COUNT, TO. As the term "a count" was frequently used in former times (especially in real actions) for "a declaration," the verb "to count" was sometimes employed as synonymous with the phrase to declare."—1 *H. B.* 552.

COUNTENANCE. Credit, estimation.—*Old Nat. Brev.* 111; *Cowel.*

COUNTER. There were formerly two city prisons in London, called the *Counters.*—*Cowel.*

COUNTER-PART. Signifies little else than a copy of the original. Blackstone's definition of it is as follows:—When the several parts of an indenture are interchangeably executed by the several parties, that part

or copy which is executed by the grantor is usually called the *original*, and the rest are counter-parts.—2 *Bl.* 296.

COUNTER-PLEA. All pleadings of an incidental kind, diverging from the main series of the allegations, are called *counter-pleas;* as when a party demands oyer, in a case where upon the face of the pleading his adversary conceives it to be not demandable, the latter may *demur*, or if he has any matter of fact to allege, as a ground why the oyer cannot be demanded, he may plead such matter, and if he plead, the allegation is called a *counter-plea to the oyer.*—*Stephen on Plead.* 79.

COUNTER ROLLS. Are *rolls* which the sheriffs of counties have with the coroners, as well of appeals as of inquests.—3 *Edw.* 1, *c.* 10; *Cowel.*

COUNTORS. (Fr. *contour*). Serjeants-at-law were anciently called *serjeant-countors.*—*Cowel.*

COUNTIES CORPORATE. Are certain cities and towns, some with more, some with less territory annexed to them; to which, out of special grace and favour, the kings of England have granted the privilege to be counties of themselves, and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. Such are London, York, Bristol, and many others.—1 *Bl.* 113.

COUNTIES PALATINE, so called *a palatio;* because the owners thereof (the Earl of Chester, the Bishop of Durham, and the Duke of Lancaster) had therein *jura regalia*, as fully as the king had in his palace. They might pardon treasons, murders, and felonies; they appointed all judges and justices of the peace, all writs and indictments ran in their names, as in other counties in the king's; and all offences were said to be done against *their* peace, and not, as in other places, *contra pacem domini regis.*—1 *Bl.* 117.

COUNTING-HOUSE OF THE KING'S HOUSEHOLD. Commonly called the *board of green cloth*, where the lord steward, treasurer of the king's house, and the comptroller, &c., sat for daily taking the accounts of the expenses of the household, and making provisions for the same, &c.—39 *Eliz. c.* 7;—*Cowel.*

COUNTRY. Is in law frequently used to signify a "*jury* of the country." Thus it is laid down with regard to any matter of law; "that the *country* shall not inquire of it, but it ought to be adjudged by the court."—9 *Rep.* 25 *a.* See tit. *Conclusion to the Country.*

COUNTRY CAUSE. A cause in which the venue is laid in any other county than in London or Middlesex, is so termed, in contradistinction to a cause in which the venue *is* laid in London or Middlesex, and which is termed a *town* cause.—*Lush*, 367.

COUNTY COURT. A court incident to the jurisdiction of the sheriff. It is not a court of record, but may hold pleas of debt or damages under the value of forty shillings. No action, however, can be brought in this court, unless the cause of action arose, and the defendant resides within the county.—3 *Bl.* 35.

COURT (*curia*). The place or building in which the proceedings of litigating parties are heard and determined. The word "court" is also frequently used in a figurative sense to signify the *judges of the court.*

COURT OF ADMIRALTY. See *Admiralty.*

COURT-BARON (*curia baronis*). The *court baron* is a court incident to every manor in the kingdom, and is held by the steward of the manor; and is of two natures; *the one* a customary court, appertaining entirely to copyholders, in which their estates are transferred by surrender and admittance, and other matters transacted relative to copyhold property; *the other* a court of common law, which is the *baron's* or freeholders' court, and is held for determining by writ of right all controversies relating to the right of lands within the manor; and also for personal actions, where the debt or damages do not amount to forty shillings.—3 *Bl.* 33.

COURT OF CHANCERY. See *Chancery.*

COURT OF CHIVALRY (*curia militaris*). Also called the *Marshal Court.* This court was formerly held before the lord high constable and earl marshal of England jointly; but, since the extinguishment of the office of lord high constable, it has usually, with respect to civil matters, been held before the earl marshal only, and takes cognizance of contracts and other matters touching deeds of arms and war as well out the realm as within it. This court is now grown out of use.—3 *Bl.* 68.

COURT CHRISTIAN. The various species of ecclesiastical courts which take cognizance of religious and ecclesiastical matters, are called *courts christian* (*curiæ Christianitatis*), as distinguished from the civil courts. —3 *Bl.* 64.

COURT OF CONSCIENCE. See *Conscience.*

COURT, COUNTY. See *County Court.*

COURT OF DELEGATES. See *Courts Ecclesiastical, sec.* 6.

COURTS ECCLESIASTICAL. The ecclesiastical courts are those which are held by the king's authority, as supreme head of the church, for the consideration of matters chiefly relating to religion. The causes usually cognizable in these courts are of three sorts, *pecuniary, matrimonial,* and *testamentary.* Pecuniary are such as arise either from the withholding ecclesiastical dues, or the doing or neglecting some act relating to the church, whereby some damage accrues to the plaintiff; *matrimonial* are such as have reference to the rights of marriage; as suits for the *restitution of conjugal rights,* for *divorces* and the like; *testamentary* are such as relate to wills and testaments, &c. The various species of ecclesiastical courts are as follow:—

1. *The Archdeacon's Court* is the most inferior court in the whole ecclesiastical polity. It is held in the archdeacon's absence, before a judge appointed by himself, and called his official; and its jurisdiction is sometimes in concurrence with, sometimes in exclusion of the bishop's court of the diocese.

2. *The Consistory Court* of every diocesan bishop is held in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses; whereof the bishop's chancellor or his commissary is the judge.

3. *The Court of Arches.* See *Arches Court.*

4. *The Court of Peculiars* is a branch of and annexed to the Court of Arches. It has jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject

to the metropolitan only. All ecclesiastical causes arising within these peculiar or exempt jurisdictions are originally cognizable by this court.

5. *The Prerogative Court* is established for the trial of all testamentary causes, where the deceased has left *bona notabilia* within two different dioceses; in which case the probate of wills belongs to the archbishop of the province. And all causes relating to wills, administrations, or legacies of such persons, are originally cognizable herein, before a judge appointed by the archbishop, called the judge of the Prerogative Court.

6. *The Court of Delegates* (*judices delegati*), appointed by the king's commission, under his great seal, and issuing out of chancery, was the great court of appeal in all ecclesiastical causes. The power and franchises of this court were by 2 & 3 Will. 4, c. 92, transferred to the privy council.

7. *A Commission of Review* was a commission sometimes granted in extraordinary cases, to revise the sentence of the court of delegates, when it was apprehended they had been led into a material error. This appeal, however, is now to the king in council.

COURTS OF EQUITY. They will be found under their respective heads or titles.

COURT OF HUSTINGS. This is the highest court of record held at Guildhall for the city of London, before the mayor, recorder, and sheriffs. It determines pleas, real, personal, and mixt; and in this court all lands, tenements, and hereditaments, rents, and services, within the city of London and suburbs, are pleadable in two hustings, one called *hustings of plea of lands*, and the other *hustings of common pleas*. In this court also the members who serve for the city in parliament must be elected by the livery of the respective companies.—3 *Bl.* 80; *Tomlins.*

COURT LEET. This is a court of record held once or twice in every year within a particular hundred, lordship, or manor, before the steward of the *leet*, for the preservation of peace, and the chastisement of divers minute offences. Its original intent was to view frank-pledges, that is, freemen within the liberty, who, it will be remembered, according to the institution of Alfred the Great, were all mutually pledges for the good behaviour of each other.—4 *Bl.* 273.

COURT OF MARSHALSEA.—See *Marshalsea.*

COURT MARTIAL. A military court for trying and punishing the military offences of soldiers in the army.

COURT OF PECULIARS. See *Courts Ecclesiastical, sec.* 4.

COURT OF PIE-POUDRE (*curia pedis pulverisati*). A court held in fairs, to do justice to buyers and sellers, and for the redress of disorders committed therein. It is so called because the time of year when it was held being summer, the suitors came with *dusty feet.*—*Cowel.*

COURT OF RECORD. Is a court, the judgments and proceedings of which are carefully registered and preserved under the name of *records* in public repositories, set apart for that particular purpose, and to them frequent recourse is had when any critical question arises, in the determination of which former precedents may give light or assistance. That there shall be four superior courts of record, the Chancery, the King's Bench, the Common Pleas, and the Exchequer, is a doctrine of the common law. By stat. 1 & 2 Vict. c. 94,

the public records of the kingdom are now in general placed under the superintendence of the master of the rolls for the time being, and a public record office is to be established.—1 *Stephen's Bl.* 47.

COURT OF REQUESTS. See *Conscience, Courts of.*

COURT OF REVIEW. See tit. *Review, Court of.*

COURT OF THE LORD STEWARD OF THE KING'S HOUSEHOLD, or (in his absence) of the treasurer, comptroller, and steward of the *Marshalsea*, was erected by stat. 33 Hen. 8, c. 12, with a jurisdiction to inquire of, hear and determine all treasons, misprisions of treason, murders, manslaughters, bloodshed, and other malicious strikings, whereby blood shall be shed in or within the limits (i. e. within two hundred feet of the gate,) of any of the palaces and houses of the king, or any other house where the royal person shall reside.—4 *Inst.* 133; 4 *Bl.* 276.

COURT OF STAR-CHAMBER (*camera stellata*). A court of very ancient original, but new modelled by statutes 3 Hen. 7, c. 1, and 21 Hen. 8, c. 20, consisting of divers lords, spiritual and temporal, being privy councillors, together with two judges of the courts of common law, without the intervention of any jury. Their jurisdiction extended legally over riots, perjury, misbehaviour of sheriffs, and other misdemeanors contrary to the laws of the land; yet it was afterwards stretched to the asserting of all proclamations and orders of state, to the vindicating of illegal commissions and grants of monopolies, holding for honorable that which it pleased, and for just that which profited, and becoming both a court of law to determine civil rights, and a court of revenue to enrich the treasury. It was finally abolished by 16 Car. 1, c. 10, to the general satisfaction of the whole nation.—4 *Bl.* 226, 267; *Lamb. Arch.* 156.

COURTS AT WESTMINSTER. The superior courts, both of law and equity, have for several centuries been fixed at Westminster Hall, an ancient palace of the monarchs of this country. Formerly, all the superior courts were held before the king's capital justiciary of England, in the *aula regis*, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to another. This was found to occasion great inconvenience to the suitors, to remedy which it was made an article of the great charter of liberties both of King John and King Henry III., that "common pleas should no longer follow the king's court, but be held in some certain place," in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. The courts of equity, also, sit at Westminster during term time, but out of term they generally sit in courts provided for the purpose in the neighbourhood of Lincoln's Inn.

COURTS OF RECORD. See tit. *Court of Record.*

COURTS OF THE UNIVERSITIES. The chancellors' courts in the two universities of England enjoy the sole jurisdiction, in exclusion of the king's courts, over all civil actions and suits whatsoever, when a scholar or privileged person is one of the parties; excepting in such cases where the right of freehold is concerned. These privileges were granted in order that the students might not be distracted from their studies by legal process from distant courts and other forensic avocations. And these courts are at

duty it is to call a plaintiff who is nonsuited at the trial (see tit. *Calling the Plaintiff*), or to call the jury, &c. His fees (as are those of the other officers of the courts) are regulated by a table of fees sanctioned by the judges under the authority of 7 Will. 4 & 1 Vict. c. 30.—*Bagley's Pr.* 8.

CRIME. The distinction between a *crime* and a civil injury is, that the former is a breach and violation of the *public rights* and duties due to the whole community, considered as such, in its social aggregate capacity; whereas the latter is merely an infringement or privation of the civil rights which belong to individuals considered merely in their individual capacity.—4 *Bl.* 4.

CRIMPAGE. The reward to which a person is entitled for having procured and shipped seamen on the ship of another.—2 *Chit. Pl.* 54.

CROFT. A word frequently inserted in conveyances of land, and seems to signify a small piece of land or ground.

CROSS ACTION. Where A. having brought an action against B., and B. brings an action against A. upon the same subject-matter, or arising out of the same transaction, this second action is called a *cross action*. And this double action is sometimes necessary to insure justice to both parties; as in the case of a contract in which neither of the contractors is subjected to any condition, precedent to his right to enforce performance by the other of his part; but the promises on each side are independent of what is to be done upon the other. In such a case the non-performance of the plaintiff's promises would be no defence to an action for the non-performance of the defendant's, whose sole remedy, therefore, against the plaintiff would be by a *cross* action.—*Smith's L. C.* 4—15; 6 *T. R.* 570; 9 *B. & C.* 259.

CROSS BILL. A suit in equity is commenced by the plaintiff filing his bill, wherein is stated all the circumstances which gave rise to the complaint; the defendant's mode of defence is then usually by *answer*, wherein he controverts the facts stated in the bill, or some of them, &c., but when he is unable to make a complete defence to the plaintiff's bill, without disclosing some facts which rest in the knowledge of the plaintiff himself, he then files what is called a *cross bill*, which differs in no respect from the plaintiff's original bill, excepting that the occasion which gave rise to it proceeded from matter already in litigation.—*Gray's Chan. Pract.*; 3 *Bl.* 448.

CROSS DEMANDS. These arise where one man against whom a demand is made by another, in his turn makes a demand against that other, and of such *cross* demand a *set-off* is in law the most familiar instance, a set-off being a statutory right of balancing mutual debts between the plaintiff and defendant in an action.—1 *Chit. Pl.* 595.

CROSS REMAINDER. See title *Remainder*.

CROWN COURT. Is the court in which the crown or criminal business of the assizes is transacted. See titles *Civil Side* and *Plea Side*.

CROWN DEBTS. Debts due to the crown. In the payment of debts by an executor or administrator, these claim the precedence to all other debts, prior or subsequent; but the debts so privileged are confined to such as are due by matter of record or specialty.—2 *Wms. Ex.* 793.

CROWN LAW. That part of the common law of England which is applicable to criminal matters.—*Com. Dig. tit. Ley (A).*

CROWN OFFICE. An office of the Court of Queen's Bench, the master of which is usually called clerk of the crown, and in pleadings and other law proceedings is styled "coroner and attorney of our lady the queen." In this office the attorney-general and clerk of the crown exhibit informations for crimes and misdemeanors, the one *ex officio*, the other commonly by order of the court. And by the 4 & 5 W. & M. c. 18, the master of the crown office may file criminal informations, with leave of the court, upon the complaint or relation of a private subject.—4 *Bl.* 265; 1 *Arch. Pract.* 24.

CROWN PAPER. A paper containing the list of criminal cases which await the hearing or decision of the Court. The term is commonly applied to the Court of Queen's Bench, which has an exclusive criminal jurisdiction; and it then includes all cases arising from informations *quo warranto*, criminal informations, criminal cases brought up from inferior courts by writ of *certiorari* and cases from the sessions. —*Bagley's Pr.* 559.

CROWN SIDE is the side or department of the assize court, in which the criminal business is disposed of. See tit. *Civil Side.*

CRY DE PAIS. On the commission of a robbery or other felony, *hue and cry* may be raised by the *country*, in the absence of the constable, which is thence called *cry de pais.*—2 *Hale's Hist. P. C.* 100.

CUCKING-STOOL (*tumbrellum*). An engine of correction for common scolds, which in the Saxon language is said to signify the scolding-stool, though now it is frequently corrupted into *ducking*-stool, because the judgment is, that when the woman is placed therein, she shall be plunged in the water for her punishment. It is called a trebucket, tumbrel, and castigatory.—3 *Inst.* 219; 4 *Bl.* 168.

CUI ANTE DIVORTIUM. A writ which lay for a woman, when a widow or when divorced, to recover her estate, which her husband, during her coverture (*cui in vita sua, vel cui ante divortium, ipsa contradicere non potuit*), had aliened.—*Britton, c.* 114, *fol.* 264; 3 *Bl.* 183.

CUI IN VITA. See tit. *Cui ante Divortium.*

CULPRIT. Besides its popular sense of a prisoner accused of some crime, it used formerly to be made use of in the following manner. When a prisoner had pleaded not guilty, *non culpabilis*, or *nient culpable*, which used to be abbreviated upon the minutes thus, "*non* (or *nient*) *cul*," the clerk of the assize, or clerk of the arraigns, on behalf of the crown, replied that the prisoner is guilty, and that he was ready to prove him so. This was done by two monosyllables in the same spirit of abbreviation, "*cul prit*," which signified, first, that the prisoner was guilty (*cul, culpable*, or *culpabilis*), and then that the king was ready to prove him so; *prit, præsto sum*, or *paratus verificare.* This was therefore a replication on behalf of the king *vivâ voce* at the bar, which was formerly the case in all pleadings, as well in civil as in criminal causes.—4 *Bl.* 339.

CULVERTAGE (*culvertagium*). The true sense of this word, says Cowel, is not cowardice as some have surmised, but confiscation or forfeiture

of lands and goods; it was a Norman feodal term for the lands of the vassal escheating to the lord; and *sub nomine culvertagii* was *under pain of confiscation.—Cowel.*

CUM TESTAMENTO ANNEXO. Where a deceased person has made a will, but without naming any executor, or has named incapable persons; or where the executors appointed refuse to act, or die intestate, in any of these cases the ordinary must grant administration *cum testamento annexo* (with the will annexed) to some other person, in the choice of whom he must prefer the residuary legatee to the next of kin.—2 *Stephen's Bl.* 242; 1 *Wms. Exors.* 348. See tit. *Administration.*

CUMULATIVE LEGACY. Legacies are said to be cumulative as contradistinguished from such as are merely repeated. Where the testator has twice bequeathed a legacy to the same person, it becomes a question whether the legatee be entitled to both, i. e. whether the second legacy shall be regarded as a repetition merely of the prior bequest, or as an additional bounty and cumulative to the other's benefit. On this point the intention of the testator is the rule of construction.—2 *Wms. Exors.* 1020.

CUNTEY-CUNTEY. A kind of trial, which is thought by some to have been much the same as the ordinary trial by jury.—*Brac. lib.* 4, *tract.* 3, *c.* 18; *Cowel.*

CUR. ADV. VULT. An abbreviation of *Curia advisare vult*, which see under that title.

CURATOR. In the Roman laws was the same as the committee of an infant's estate is in our law; the guardian performing with us the office both of *tutor* and *curator* of the Roman laws.—1 *Bl.* 460.

CURE BY VERDICT, *To.* After a cause has been sent down to trial, the trial had, and the verdict given, the courts overlook defects, in the statement of a title, which would be fatal on a demurrer, or if taken at an earlier period. This is what is meant by the term *to cure by verdict*; and the reason of it is, that the courts presume that all circumstances necessary in form or substance to complete a title imperfectly stated, were proved before the verdict was given; which reason explains the limitation laid down as to the effect of the verdict, viz. that it cures the statement of a title defectively set out, but not of a defective title; for where the plaintiff totally omits to state his title or cause of action, it need not be proved at the trial, and therefore there is no room for presumption.—1 *Smith's L. C.* 338; 1 *Wms. Saund.* 227. See further tit. *Aider.*

CURED BY VERDICT. See title *Cure by Verdict.*

CURIA (*court*). In its general acceptation a court of justice. It was sometimes, however, taken for the persons, or feudatory and other customary tenants who did suit and service at the lord's court.—*Kennet's Paroch. Antiq.* 130. See also title *Court.*

CURIA ADVISARE VULT (*the court wishes to advise*). The courts sometimes take time to deliberate before giving judgment when the point before them is one of unusual difficulty; and their suspension of judgment is usually signified by the entry of the words "*curia advisare vult*," meaning that they wish to take time to consider.

CURIA CURSUS AQUÆ. A court held by the lord of the manor of Gravesend for the regulation of boat

and barge traffic on the Thames between Gravesend and London.—2 *Geo.* 2, *c.* 26.

CURIA CLAUDENDA. A writ that lay against him whose duty it was to fence or close up his ground, and yet refused or deferred to do it.—*Reg. Orig.* 155; *F. N. B.* 127. Abolished since 31st December, 1834.

CURIA DOMINI. The lord's house, hall, or court, where all the tenants, if need should be, were bound to attend every three weeks, but generally at the feasts of the *Annunciation* and *St. Michael.*

CURIA PENTICIARUM. A court held by the sheriff of Chester in a place called the Pentice; and supposed to have taken its title from having been held in a *penthouse* or open shed.—*Cowel.*

CURING BY VERDICT. See tit. *Cure by Verdict;* also tit. *Aider.*

CURSITORS. Are officers connected with the Court of Chancery, of very ancient institution, and twenty-four in number. They make out all original writs; and the business of the several counties in England in this respect is distributed among them by the lord chancellor, by whom they are also appointed. They are called cursitors from the writs *de cursu*: in stat. 18 Edw. 3, c. 5, they are called clerks of course.—*Arch. Prac.* 27.

CURTESY OF ENGLAND, *Tenant by the.* When a man marries a woman seised of an estate of inheritance, i. e. of lands and tenements in fee simple, or fee tail, and has by her issue born alive, which was capable of inheriting her estate; in this case he shall, on the death of his wife, hold the lands for his life as *tenant by the curtesy of England.*—*Lit.* 35, 52; 2 *Bl.* 126.

CURTILAGE (*curtilagium*, from the Fr. *cour*, court, and Sax. *leah*, locus). A piece of ground lying near and belonging to a dwelling house, as a court yard, or the like.—*Cowel.*

CURTILES TERRÆ. See title *Court Lands.*

CUSTANTIA. The same as *custagium*, which signifies costs.—*Cowel.*

CUSTODE ADMITTENDO and CUSTODE AMOVENDO. Writs for the admitting or removing of guardians.—*Reg. Orig.*; *Cowel.*

CUSTODES LIBERTATIS ANGLIÆ AUTHORITATE PARLIAMENTI.—During the rebellion in the reign of Charles the First, all writs and judicial processes ran in the above style.—*Cowel.*

CUSTODIAM DARE. Was a gift or grant for life.—*Du Cange*; *Cowel.*

CUSTOM (*consuetudo*). Is a law not written, established by long usage, and the consent of our ancestors. *Customs* are either *general* or *particular*; general customs are the universal rule of the whole kingdom, and form the common law in its stricter and more usual signification: particular customs are those which for the most part affect only the inhabitants of particular districts, such as gavelkind in Kent, and the like.

CUSTOMS OF LONDON. These are particular customs relating to the government of the city of London, and also to trade, apprentices, widows, orphans, &c. They differ from all others in point of trial, for if the existence of the custom be brought

in question, it shall not be tried by a jury, but by certificate from the lord mayor and aldermen by the mouth of their recorder, unless it be such a custom as the corporation is itself interested in, as a right of taking toll, &c., for then the law does not permit them to certify on their own behalf.—1 *Bl.* 76.

CUSTOM OF MERCHANTS (*lex mercatoria*). A particular system of customs used only among one set of the king's subjects, which, however different from the general rules of the common law, is yet engrafted into it, and made part of it, being allowed for the benefit of trade to be of the utmost validity in all commercial transactions, it being a maxim of law *cuilibet in sua arte credendum est.* This *lex mercatoria* or *custom of merchants* comprehends the laws relating to bills of exchange, mercantile contracts, sale, purchase, and barter of goods, freight, insurance, &c.—1 *Chit. Bl.* 76, *and note* 9.

CUSTOMS ON MERCHANDISE. Are duties or tolls charged upon merchandise exported and imported, and which form a part of the royal revenue.—1 *Bl.* 313.

CUSTOMARY TENANTS. Tenants who hold their estates according to the custom of the manor. A copyhold tenant is so called because he holds his estate by copy of court roll at the will of the lord according to the *custom of the manor*; and although a distinction has been made between a copyholder and a *customary tenant*, yet they both agree in substance and kind of tenure, i. e. by *custom* and continuance of time. — 2 *Bla.* 148; *Culthorpe on Copyholds.*

CUSTOMS AND SERVICES annexed to the tenure of lands, are those which the tenants thereof owe unto their lords; and which if withheld, the lord may resort to a *writ of customs and services* to compel them. —*Cowel; Tomlins.*

CUSTOS BREVIUM. An officer in the Court of King's Bench and Common Pleas, who had the *custody of writs* and records. This office was abolished by 7 Will. 4 & 1 Vict. c. 30.

CUSTOS PLACITORUM CORONÆ. An officer who is thought to have been the same as our *custos rotulorum.* —*Reg. Orig.* 133; *Cowel.*

CUSTOS ROTULORUM. A special officer to whose custody the *records or rolls* of the sessions are committed; he is always a justice of the *quorum*, and is usually selected either for his wisdom, countenance, or credit; his nomination is by the king's sign manual, and to him the nomination of the clerk of the peace belongs, which office he is expressly forbidden to sell for money.—37 *H.* 8, *c.* 1; *Lambard*; 4 *Bl.* 272.

CUSTOS OF THE SPIRITUALITIES. He who exercises spiritual or ecclesiastical jurisdiction in a diocese during the vacancy of the see.—*Cowel.*

CUSTOS OF THE TEMPORALITIES (*custos temporalium*). He to whose custody a vacant see or abbey was committed by the king as supreme lord, who, as steward of the goods and profits thereof, was to give an account to the *escheator*, and he into the exchequer. His trust continued till the vacancy was supplied by a successor, who obtained the king's writ *de restitutione temporalium*, which was sometimes after and sometimes before consecration, though more frequently after.—*Cowel.*

CUSTUMA ANTIQUA SIVE MAGNA (*ancient or great duties*). Duties payable by every merchant,

as well native as foreign, on wool, sheepskins, or woolfells, and leather exported; the foreign merchant had to pay an additional toll, viz. half as much again as was paid by the natives.—1 *Bl.* 314.

CUSTUMA PARVA ET NOVA (*small and new duties*) Imposts of three pence in the pound, due from merchant strangers only, for all commodities as well imported as exported, and was usually called the alien's duty, and was first granted in 13 Edw. 1.—4 *Inst.* 29; 1 *Bl.* 314.

CUT-PURSE. A pickpocket.—4 *Bl.* 242.

CYNEBOTE. See tit. *Cenegild.*

CY PRES (*as near us, so near*). In cases where an attempt is made to create a perpetuity, i. e. to limit the estate to several successive lives *in futuro*, there is a material difference between a deed and a will; for in the case of a deed all the limitations are totally void; but in the case of a will, the courts do not, if they can possibly avoid it, construe the devise to be utterly void, but explain the will in such a manner as to carry the testator's intention into effect, *as far as* the rules respecting perpetuities will allow, which is called a construction *cy pres.*—6 *Cru. Dig.* 165.

CYRICBRYCE (Sax.) *Irruptio in ecclesiam.*—*L L. Eccl. Canuti Regis.*

D.

DA (Fr.) A word affirmative for yes.—*Law French Dict.*

DAMAGES. A compensation and satisfaction given to a man by a jury for some injury by him sustained; as for a battery, for an imprisonment, for slander, or for trespass.—2 *Bl.* 438.

DAMAGE CLEER (*damna clericorum*). A fee assessed of the tenth part in the *common pleas*, and the twentieth part in the *king's bench* and *exchequer* out of all *damages* (exceeding five marks) recovered in those courts in all actions on the case, covenant, trespass, battery, &c., and others wherein the damages were uncertain, which the plaintiff paid to the prothonotary, or chief officer of that court wherein they were recovered, before he could take out execution for them; this was originally a gratuity given to the prothonotaries and their clerks for drawing special writs and pleadings; but was taken away by 17 *Car.* 2, *c.* 6, *s.* 2, which forbids the receiving any such gratuity or fee, under pain of forfeiting treble the sum so received.—*Cunningham.*

DAMAGE-FEASANT, or FAISANT (*doing damage*). One of the injuries for which a distress may be had, is where a man finds the beasts of a stranger wandering in his grounds, *damage feasant*, i. e. *doing* him hurt or *damage*, by treading down his grass or the like, in which case the owner of the soil may distrain them, until satisfaction be made him for the injury he has thereby sustained.—3 *Bl.* 7.

DAM. A boundary or confinement, *infra damnum suum*, within the bounds of his own property or jurisdiction.—*Bract. lib.* 2, *c.* 37.

DAMNUM ABSQUE INJURIA (damage without an injury). If a man commences a business in any particular place, another man may do the same thing in the same place, even though he draw away the business from the other, and this is *damnum*

absque injuriâ, a damage without an injury.—3 *Salk.* 10; *Tomlins.*

DANEGELT or DANE-GELD. A tribute laid on our ancestors of 1*s.* and afterwards of 2*s.* for every hide of land throughout the realm, for clearing the seas of *Danish* pirates, which they did by making a pecuniary stipulation with the Danes for that purpose.—*Camd. Brit.* 142; *Spelman; Cowel.*

DANE-LAGE. The foreign customs which the Danes introduced into our laws went under the name of *Dane-lage.*—4 *Bl.* 411.

DANGERIA. A pecuniary payment made by the forest tenants to their lord, to gain leave to plough and sow in time of *pannage* or *mast-feeding.*—*Cowel.*

DAPIFER (*à dapes ferendo*). Originally a domestic officer, like our steward of the household or clerk of the kitchen; but it by degrees became applied more especially to the chief steward or head bailiff of any honor or manor.—*Cowel.*

DARE AD REMANENTIAM. To give away in fee or for ever.—*Glanvil, lib.* 7, *c.* 1.

DARRIEN. Signifies *last*; corrupted from the French *dernier.*—*Cowel.*

DARREIN PRESENTMENT. See *Assise of Darrein Presentment.*

DATIVE or DATIF. Whatever may be given or disposed of at will or pleasure.—45 *Ed.* 3, *c.* 10; *Cowel.*

DAY. In the space of a day all the twenty-four hours are usually reckoned. Therefore, in general, if I am bound to pay money on a certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences.—1 *Stephen's Bl.* 265. The word "days" used alone in a clause of demurrage for unlading in the River Thames is said not to include *Sundays* or holydays, by usage among merchants in London, but means *working* days only.—*Abbott on Sh.* 264.

DAY RULE. A certificate of permission which the court in term time gives to a prisoner to go beyond the rules of the prison for the purpose of transacting his business, upon application to the marshal or warden (according to whose custody the prisoner is in), and signing a petition to the court for that purpose.—2 *Arch. Pract.* 910.

DAYS IN BANK (*dies in banco*). In every term there were stated days called *days in bank*, which meant days of appearance in the court of common bench; they were about a week apart from each other, and had reference to some festival of the church. On one of these days in *bank* all original writs were made returnable, and hence it was usually called the *return day* of that particular term.—3 *Bl.* 277.

DAYS-MAN. An arbitrator is so called in the north of England.—*Cowel.*

DEAD FREIGHT. Appears to be freight payable by the charterer of a vessel under or by virtue of his charter party, when the cargo, in respect of which it is payable, has from some cause on the part of the charterer not been conveyed as provided. See 3 *Camp.* 428.

DEADLY FEUD. An open profession of irreconcileable enmity against a man, till revenge has been obtained even by his death. This enmity or

deadly feud was allowed by our ancient laws in the times of the Saxons; so that when any man had been killed and no pecuniary satisfaction had been made to the deceased's kindred, it was lawful for them to take up arms and revenge themselves on the murderer.—43 *Eliz. c.* 13; *Cowel.*

DEAD PLEDGE (*mortuum vadium*). See *Mortgage.*

DE-AFFORESTED or DISAFFORESTED. Freed or exempted from the forest laws, as *de warrenata* signifies the breaking up or doing away with a warren.—17 *Car.* 1, *c.* 16; *Cowel.*

DEAN (*decanus*, from the Greek Δεκα, ten). An ecclesiastical dignitary so called because he presides over *ten* canons or prebendaries at least; he is next in rank to the bishop, and is head of the chapter of a cathedral. A *dean* and chapter is a spiritual corporation, and form together the council of the bishop, to assist him with their advice in affairs of religion and also in the temporal concerns of his see. All ancient *deans* were elected by the chapter, by *congé d'eslire* from the king, and letters missive of recommendation, in the same manner as bishops; but in those chapters that were founded by Henry the Eighth out of the spoils of the dissolved monasteries, the deanery is donative, and the installation merely by the king's letters patent. The chapters consisting of canons or prebendaries are sometimes appointed by the king, sometimes by the bishop, and sometimes elected by each other.—1 *Bl.* 382; 3 *Rep.* 75.

DEAD MAN'S PART. That portion of the personal property of a person dying intestate that goes to the administrator.—2 *Bl.* 518.

DEATH. The death of a person was formerly accounted to be either a natural or a civil death; the former signifying the natural dissolution of the body; the latter commencing when any man was abjured the realm by the process of the common law, or entered into religion, that is, went into a monastery, and became a professed monk; in which cases he was considered absolutely dead in law, and his next heir should have his estate. Indeed a monk, or such religious person, was so effectually dead in law, that a lease made even to a third person, during the life of one who afterwards became a monk, was determined by his entry into religion or so becoming a monk; whence leases, and other conveyances for life, were usually made for the term of one's *natural life.*—1 *Bl.* 132; *Co. Litt.* 132.

DE BENE ESSE. In law, signifies conditionally; as where a plaintiff files his declaration *de bene esse*, it signifies *conditionally*, in contradistinction to his filing it *absolutely.*—1 *Arch. Pract.* 280. Or as Cowel expresses it, to do a thing *de bene esse* is to allow or accept for the present as good until it comes to be more fully examined, and then to stand or fall according to its merits.—*Cowel.*

DEBENTURE. An instrument in the nature of a bond or bill to charge the government with the payment of a certain sum of money due to a creditor or his assigns. There are debentures also used in mercantile transactions at the custom house.—*Cowel*; 41 *G.* 3, *c.* 75, *sec.* 7.

DEBET ET DETINET (*he owes and detains*). Words usually inserted in the declaration in an action of debt as follows: "and the plaintiff demands of the defendant the sum of £——, which the defendant *owes* to and unjustly *detains* from him." Both

of these words are generally introduced, for the rule is, that "the declaration should be in the *debet* and *detinet*," but upon the principle that a man may complain of only a part of his grievance, the plaintiff may abridge his demand and declare in the *detinet* only, which action differs from that of detinue in respect of the property in any specific goods not being necessarily vested in the plaintiff at the time the action is brought, which is essential in detinue. In actions against, or by, executors or administrators, the declaration indeed should in strictness be only in the *detinet*, but if "owes to and" be untechnically inserted, it is no ground of demurrer nor an irregularity. And in debt for specific goods also, the declaration should be in the *detinet* only.—1 *Chitty Pl.* 374; 2, 284.

DEBET ET SOLET. Words used in a writ of right; as where a man sued to recover any right whereof his ancestor was disseised by the tenant or his ancestor; then he used only the word *debet* in his writ, because his ancestor only was disseised and the estate discontinued; but if he sued for anything that was for the first time denied him, then he used both the words *debet et solet*; because his ancestors before him, as well as he himself, had usually enjoyed the thing for which he sued, until this present refusal of the tenant.—*Old Nat. Brev.* 78; *Les Termes de la Ley.*

DE BONIS NON, *Administration.* The title by administration, differing from that of an executor created by will, never devolves from one person to another by representative right, and consequently, the executor of A.'s administrator, or the administrator of A.'s executor, is not the representative of A. In every case, therefore, of an administrator's death, or of the death of an executor who has appointed no executor to represent him, it is necessary for the ordinary to commit administration afresh *of the goods* of the deceased, *not* administered by the former executor or administrator. And this administrator, *de bonis non*, is the only legal representative of the deceased in matters of personal property.—2 *Stephen's Bl.* 243; 7 *M. & W.* 306. See tit. *Administration, &c.*

DEBT (*debitum*). The legal signification of *debt* is a sum of money due by certain and express agreement: as by a bond for a determinate sum; a bill of exchange, or a promissory note, or a rent reserved on a lease; where the quantity is fixed and specific, and does not depend upon any subsequent valuation to settle it. The non-payment of these is an injury, for which the proper remedy is by action of *debt*, to compel the performance of the contract and to recover the specific sum due. Debts are either debts of *record*, *specialty* debts, or *simple contract* debts. Debts of record are the highest and most important kind, and are such debts as appear to be due by the evidence of a court of *record*, as a sum of money recovered by a plaintiff against a defendant in an action at law; for this having been adjudged due from the defendant to the plaintiff by the sentence of the court is considered a contract of the highest nature. Debts upon recognizance are also sums of money recognized or acknowledged to be due to a party, in the presence of some court, or magistrate, and these, together with statutes merchant, and statutes staple, &c, are also ranked among this first class of *debts*, viz. debts of record; since the contract on which they are founded is witnessed by the highest kind of evidence, viz. by matter of record. *Specialty debts* are such as become due or are acknowledged to be due by some deed or

instrument under seal; as by a deed of covenant, by lease reserving rent, or by bond or obligation; thus in the case of a lease where rent is reserved, if the lessee omits to pay such rent as in the lease he covenants to pay, the debt which he thus incurs is a specialty debt; and these kind of debts are looked upon as the next in importance to those of record, because they are confirmed by special evidence *under seal*. *Simple contract debts* are such, where the contract upon which the obligation arises is neither ascertained by matter of record, nor by deed or instrument under seal, but merely by oral evidence or by some written agreement or contract not under seal; as where the only evidence of such debt is a verbal promise, or a bill of exchange or promissory note, or the like; and these are considered in law as belonging to the least important of the three classes of debts above mentioned.—2 *Bl.* 464—467; and *Chitty's Notes.*

DECEIT (*deceptio*). In all contracts it is understood that the seller undertakes that the commodity he sells is his own; and if it proves otherwise, an action on the case lies against him to exact damages for this *deceit*. There was also a *writ of deceit* which lay for one who received injury or damage from him who did anything *deceitfully* in the name of another.—*F. N. B.* 95; 3 *Bl.* 166.

DECENNARY. A tithing or a division of the territory of England, composed of ten freeholders with their families; the institution of this civil division, together with those of counties and hundreds, are supposed to have been introduced into this country from the continent by some of the first Saxon settlers.—*Mirr. c.* 1, *s.* 3; 1 *Chitty's Bl.* 114, *note* 31.

DECEM TALES. When some of the persons impanelled on a jury do not appear, or appearing are challenged by the plaintiff or defendant on account of partiality or other cause, in this case the judge grants a supply to be made by the sheriff of other men instead of those that were impanelled, and thereupon a writ goes to the sheriff *apponere decem tales*, &c. and a fresh supply is made accordingly.—*Les Termes de la Ley; Cowel.*

DECEPTIONE. See *Deceit.*

DECIES TANTUM. A writ which lay against a juror for having taken money from either plaintiff or defendant in consideration of giving his verdict; the writ is so called because the juror shall pay *ten times as much* as he has received. This writ also lay against *embraceors* for their intermeddling with a jury.—*Reg. Orig.* 188; *Les Termes de la Ley.*

DECIMATION (*decimatio*). The punishing every *tenth* soldier by lot was *Decimatio legionis.* It may also sometimes signify a tithing.—*Cowel.*

DECINERS, DECENNIERS or DOZINERS, (*decennarii*). In our old law writings, those who were accustomed to have the command and oversight of *ten* free burghs, for preserving the king's peace: and the limits or circuits of their jurisdiction were called *Decenna.* In the times of the Saxons these persons seemed to have great authority, taking cognizance of causes within their circuit, and redressing wrongs by way of judgment. But in the more modern writers this word signifies nothing more than one who by his oath of loyalty to his prince is settled in the combination or society of a Dozeine; and a Dozeine seems to extend as far as the leet extends, because in leets only this oath is administered by the steward, and taken by such as are of

the age of twelve years and upwards, dwelling within the precinct of the leet where they are sworn.—*Nat. Brev.* 161.

DECLARATION. In an action at law signifies the plaintiff's statement of his cause of action; wherein he *declares* the reason of his complaint and states the nature and quality of his case. The declaration is generally divided into *counts* or departments, each of which contains, or ought to contain, a distinct ground of complaint. Its parts and particular requisites consist in the title of the court in which the action is brought and of the term; the venue or county, mentioned in the margin, and wherein all matters stated in the declaration are supposed to have taken place; the commencement; the statement of the cause of action; the several counts; the conclusion; and the profert.—*Step. on Pleading*; 3 *Chitty's Bl.* 393, *note* 2. A plaintiff is technically said *to declare* when he delivers his declaration to the opposite party.

DECLARATION OF USES. See tit. *Declaring a Use.*

DECLARATORY ACT. An act of parliament which, instead of making any change in the law, only *declares* what the law is at the time of its enactment, and the object of which is, as commonly set forth in the preamble, to remove doubts which have arisen on the subject. Thus the Statute of Treasons (25 Edw. 3, c. 2) makes not any new species of treasons, but only for the benefit of the subject declares and enumerates the several kinds of offence which before were treason at the common law.—1 *Stephen's Bl.* 68.

DECLARE. See tit. *Declaration.*

DECLARING ABSOLUTELY. See tit. *Absolutely declaring.*

DECLARING A USE. Pointing out, stating, or *declaring*, for whose use or benefit lands previously conveyed to a trustee are to be held by such trustee. The party who so conveyed lands to a trustee, usually *declared* his intention with regard to them by a subsequent deed or instrument, which was thence termed a "deed to *declare the uses.*" The phrase may be further explained by the following passage from *Cruise*: "where lands are conveyed by feoffment, fine, or recovery, the legal seizin and estate becomes vested by these conveyances in the feoffee, cognizee, or recoveror. But if the owner of the estate *declares* his intention, that such feoffment, fine, or recovery, shall enure to the use of a third person, a use will immediately arise to such third person out of the seizin of the feoffee, cognizee, or recoveror.—4 *Cruise, Dig.* 129.

DECLARING BY THE BYE. See tit. *By the bye.*

DECREE. The judgment of a court of equity, and of much the same nature as a judgment at common law. See this word explained in the Outline of a Suit in Equity, at the end of this Dictionary.

DECRETALS (*decretales*). Papal decrees of various popes that were published under the auspices of Gregory the Ninth about the year 1230, in five books, entitled *decretalia Gregorii noni.* A sixth book was added by Boniface the Eighth, about the year 1298, which is called *sextus decretalium.*—1 *Bl.* 82.

DEDBANA (*Sax. ded-bane*). A murderer, homicide, or manslayer.—*Leg. Hen.* 1, *cap.* 85; *Cowel.*

DEDI (*I have given*). This word in a deed or conveyance amounts to a warranty to the persons and his heirs to whom the lands are conveyed.—*Co. Litt.* 384.

DEDIMUS POTESTATEM. A writ issuing out of chancery empowering certain persons therein named to perform certain acts; as when a justice of the peace appointed under the king's commission intends to act under this commission, a writ of *dedimus potestatem* issues, empowering certain persons therein named to administer the usual oaths to him; which being done, he is at liberty to act.—*Lamb.* 23; 1 *Bl.* 352. *Dedimus potestatem de attornato faciendo.* At common law the parties in an action were obliged to appear in court in person unless allowed by a special warrant from the crown (bearing the above title) to appoint an attorney; or unless after appearance they had appointed a deputy called a *Responsalis* to act for them, and which the court allowed them to do in some instances. But now a general liberty is given to parties in an action to appear by attorney, excepting in the cases of infants, ideots, and married women. —*F. N. B.* 25; 1 *Arch. Pract.* 61.

DEED (*factum*). A deed is a writing sealed and delivered by the parties. It is sometimes called a charter, *carta*, from its materials; but most usually when applied to the transactions of private subjects, it is called a deed, because it is the most solemn and authentic act that a man can possibly perform with relation to the disposal of his property, and it consists of three principal points, *writing*, *sealing*, and *delivery*; writing, to express the contents; sealing, to testify the consent of the parties; and delivery, to make it binding and perfect.—*Co. Litt.* 171; 2 *Bl.* 295. If a deed be made by more parties than one, there should be as many copies of it as there are parties, and each should be cut or indented (formerly in acute angles, *instar dentium*, like the teeth of a saw, but now in a waving line), on the top or side, to tally or correspond with each other, and a deed so made is called an indenture. See *Chirograph.*

DEED OR IN LAW. A phrase used with reference to contracts or agreements which are said to be *in deed*, when entered into expressly by the parties themselves; and *in law*, when they arise, by construction of law, out of the relative position of the parties. Thus it is laid down as a general rule, that debt lies upon every contract *in deed or in law.*—*Com. Dig. Debt, A.* 1; 1 *Chitty's Pl.* 123.

DEED-POLL. A deed made by one party only and not indented, but *polled* or shaved quite even; and thence called a *deed-poll.* Such a deed is not an agreement between two persons, but a declaration of some one particular person. Thus a feoffment from A. to B. by deed-poll is not an agreement between A. and B., but rather a declaration by A. addressed to all mankind, informing them that he thereby enfeoffs B. of certain lands therein mentioned; and such a deed usually begins thus: "Know all men by these presents, that I, &c."—4 *Cru. Dig. p.* 9; 2 *Bl.* 296.

DEEMSTERS or DEMSTERS (Sax. *dema*, *i. e.* a judge or umpire). Certain judges in the Isle of Man who decide cases without any process or writings, and make no charges to the litigants for so doing.—*Cam. Brit.*; *Cowel.*

DE ESSENDO QUIETUM DE TOLONIO. A writ which lay for those who were privileged from the payment of toll, and yet the same had been extorted from them.—*F. N. B.* 226; *Cowel.*

DE EXPENSIS MILITIUM. A writ commanding the sheriff to levy so much *per* day for the expenses of a knight of the shire in attending parliament; and there is also a similar writ to levy 2*s.* *per* day for every citizen or burgess, called *de expensis civium et burgensium.*—4 *Inst.* 46; *Cowel.*

DE FACTO. A thing done *de facto* signifies that it is actually done, done in *deed;* a king *de facto* is one who is actually in possession of the throne without any lawful title to the same, in contradistinction to a king *de jure,* who has a right to the crown though out of possession of the same.—3 *Inst.* 7; *Cowel.*

DEFAULT, *Judgment by.* When the defendant omits to plead or put in his answer to the action within the time limited for that purpose by the courts, it is presumed that he has no defence, or that he does not intend further resisting the action, and for such default in pleading the plaintiff is entitled to sign judgment against him, which is thence termed a *judgment by default.* — See *Arch. Pr.; Lush's Pr.* 398. See also tit. *Judgment.*

DEFEASANCE. A collateral deed or instrument made at the same time with some other principal deed or instrument, and containing certain conditions, upon the performance of which the intentions of the principal deed may be *defeated* or rendered null and void. It differs from a condition in this respect, that a condition is inserted in the principal deed itself, whereas a defeasance is a separate deed or instrument executed at the same time with the principal one. A defeasance to a warrant of attorney, however, if indorsed or underwritten on the warrant of attorney itself, need not be by *deed,* nor by a separate instrument.—*Wood's Inst. lib.* 2; and see 4 *Cruise, Dig.* 98.

DEFECTUM, *Challenge propter.* See *Challenge.*

DEFENCE. When the plaintiff in an action has stated his case in his declaration, it is incumbent on the defendant within a reasonable time to make his *defence* and to put in a plea; or else the plaintiff will at once recover judgment by *default,* or *nihil dicit,* of the defendant. Defence in its true legal sense signifies not a justification, protection, or guard, which is now its popular signification; but merely an *opposing* or *denial* (from the French verb *defender*) of the truth or validity of the complaint. It is the *contestatio litis* of the civilians: a general assertion that the plaintiff hath no ground of action, which assertion is afterwards extended and maintained in his plea.—3 *Bl.* 296.

DEFEND (*defendere*). In our ancient laws and statutes signifies to prohibit or to forbid.—*Co. Litt.* 161; *Leg. Ed. Conf. cap.* 37; *Cowel.*

DEFENDANT (*defendens*). The party against whom an action at law is brought, and who therefore has to *defend* himself against such action.

DEFENDEMUS. An ordinary word in feoffments and donations; and in those instruments it binds the donor and his heirs to *defend* the donee against any attempt which may be made by any one to lay any incumbrance or servitude upon the thing given, other than that already imposed by the deed of donation. — *Bract. lib.* 2, *c.* 16; *Cowel.*

DEFENDER OF THE FAITH (*defensor fidei*). A title given to the king of England by the pope; as *Catholic* to the king of Spain, and

Most Christian to the king of France. It was given by Pope Leo the Tenth to King Henry the Eighth, for writing against Martin Luther in behalf of the church of Rome. — *Herbert's Hist. of Hen. 8th, 105; Stow's Annals,* 863.

DEFENDERE SE PER CORPUS SUUM. A phrase which occurs in Bracton and some of our old law writers, signifying to offer duel, combat, or camp-fight, as a legal trial or appeal.—*Cowel.*

DEFENDERE UNICA MANU. To wage law, by denying the accusation upon oath.—See *Manus.*

DEFENSO. That part of an open field that was kept for corn and hay, upon which there was no commoning or feeding, which was said to be *in defenso.* So any meadow ground laid in for hay; and so for any part of a wood where the cattle had not liberty to run, but was inclosed and fenced up to secure the growth of the underwood. — *Mon. Dug. tom.* 3, *p.* 306; *Cowel.*

DEFENSUM. An inclosure or any fenced ground. — *Mon. Ang. tom.* 2, *p.* 114.

DEFORCE. To deprive another of a right to lands, or to withhold lands from one who has a right to them.—See 20 *Hen.* 3, *c.* 1. See also tit. *Deforcement.*

DEFORCEMENT (*deforciamentum*). The holding of any lands or tenements to which another person has a right, but who has never yet had possession under that right. As in the case where a lord has a seignory, and lands escheat to him *propter defectum sanguinis,* but the seisin of the lands is withheld from him; here the injury arising from the person so forcibly withholding such lands is called a *deforcement.* Or if a man lease lands to another for a term of years, or for the life of a third person, and the term is determined by surrender, or by the death of the *cestuy qui vie,* or otherwise, and the lessee or any stranger, who was at the determination of the term in possession, holds over, and refuses to deliver the possession to him in remainder or reversion, this is also a *deforcement.*—3 *Bl.* 172; *Co. Litt.* 277.

DEFORCER. The party who withholds lands or tenements from him who has a right to, but who has not yet had possession of them.—20 *Hen.* 3, *c.* 1. See tit. *Deforcement.*

DEFORCIANT or DEFORCEOR. In levying a fine the person against whom the fictitious action is brought upon a supposed breach of covenant, is called the *deforciant.* The person who commits the injury of *deforcement* is also called the *deforciant* or *deforceor.*—3 *Bl.* 173; *Finch, L.* 293, 294.

DEFORCIATIO. A distress, or seizure of goods, for satisfaction of a lawful debt.—*Kennet's Paroch. Antiq.* 293; *Cowel.*

DEGRADATION (*degradatio*). The depriving a peer of his nobility is called degrading him. Thus Edward the Fourth degraded George Nevile, duke of Bedford, by act of parliament, on account of his poverty, which rendered him unable to support his dignity. It also signifies an ecclesiastical censure, whereby a clergyman is divested of his holy orders. The word *deposition* is also used in nearly the same manner, excepting that it is not so great a punishment as *degradation,* the latter word not only including *deposition,* or displacing one from an office, but also the divesting the criminal of all his badges of honour, and delivering him over to the secular judge, where he cannot purge

himself of the offence of which he was convicted.—*Seld. Tit. of Hon.* 787; 1 *Bl.* 402.

DEHORS (French, *without*). A word used in the ancient pleadings, signifying *out of, apart from*, or *without*.

DE INJURIA, *Replication*. A replication so called from the words with which it commences, which are as follow: that the defendant *of his own wrong, and without the cause, &c. &c.—de injuriâ suâ propriâ absque tali causâ*. In form it is a species of traverse, and is frequently used when the pleading of the defendant in answer to which it is directed consists merely of matter of *excuse* of the alleged trespass, grievance, breach of contract or other cause of action. Its comprehensive character in putting in issue all the material facts of the defendant's plea has also obtained for it the title of the *general replication*.—*Step. Pl.* 191, 192; 1 *Smith's L. C.* 55.

DEI JUDICIUM. The Saxon trial by *ordeal* was so called, because they thought it an appeal to God for the justice of a cause, and believed that the decision would depend upon his divine will and pleasure. — *Dr. Brady's Introd.* 272.

DELATURA. An accusation. Sometimes it signifies the reward of an informer. — *Du Fresne; Leges H.* 1, *c.* 64.

DEL CREDERE. In mercantile transactions the sale of goods is frequently effected by *factors* or by *brokers*, both being agents remunerated by a commission; but the former are entrusted with the possession of the goods, and authorized to sell them in their own names, as the apparent owners, whereas the latter have no apparent ownership, but act merely as agents between the contracting parties. Neither one nor the other, however, are, generally speaking, answerable for the due payment of the price by the party to whom they sell, but a factor frequently agrees for an additional compensation to guarantee to his principal the debt due from the buyer, and such additional compensation or commission given by the principal to the factor is termed a *del credere* commission.—*Morris* v. *Cleasby*, 4 *M. & Sel.* 574; *Ch. on Cont.* 210.

DELEGATES. The persons appointed by the commission of delegates.—See *Commission of Delegates*.

DELICTO, *Actions Ex.* Such actions as are founded on some wrong or injury committed against the person or property of a man, as distinguished from such as are founded upon the breach or violation of *contracts*, and which are termed actions *ex contractu*. Thus, an action of trespass for unlawfully entering upon any land, would belong to the class of *ex delicto* actions; whilst an action of debt or assumpsit for the price of goods sold and delivered would belong to the class of actions denominated *ex contractu*.

DELIVERY OF GAOL. See tit. *Gaol Delivery*.

DEMANDANT. The person who prosecutes a real action is called the *demandant*; in the same sense as he who prosecutes a personal action is called the *plaintiff*.

DEMESNE or DEMAIN *Lands* (*terræ dominacales*). Were those parts of a manor which the lord kept to himself as necessary for his own use. Of such lands one portion was retained in the actual occupation of the lord for the purposes of his family, another portion seems to have been

held in villenage, and the residue, being uncultivated, was termed the lord's waste, and served for public roads and for common of pasture to the lord and tenants.—1 *Stephen's Bl.* 202; *Co. Cop. s.* 12; 2 *Tyrw.* 223.

DEMISE (*demissio*). A word used in conveyances of estates in fee, for life, or for term of years; but more usually in the latter, where it is almost synonymous with the word *lease*. Thus in a lease for years it is thus used: "He, the said A. B. hath *demised* and leased, and by these presents doth *demise* and lease," &c. The word seems to signify a transfer of property. In a lease of lands it implies, *ex vi termini*, a covenant for title and a covenant for quiet enjoyment. In pleading it is employed in declarations in ejectment, wherein it is alleged that the lessor of the plaintiff *demised* the lands or tenements in question to the nominal plaintiff, which allegation is called "the demise;" and when the lessor of the plaintiff is described as making more than *one* demise, the declaration is said to contain a *double demise*.—*Ch. Pl.* 670.

DEMISE OF THE KING. The natural death of the king is generally called his *demise; demissio regis, vel coronæ;* an expression which signifies merely a transfer of property; for, as is observed in Plowden, when we say the *demise* of the crown, we mean only that, in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred or *demised* to his successor; and this is in accordance with the maxim of our law, that "*the king never dies.*"—*Plowd.* 177, 234; 1 *Bl.* 249.

DEMISE and REDEMISE. When there are mutual leases made from one party to another on each side, of the same land or something out of it, it is said to be a conveyance by *demise and redemise;* as where A. grants a lease to B. at a *nominal* rent, and the latter *redemises* the same property to A. for a shorter term at a *real substantial* rent.—*Jacob.*

DEMUR, To. When the plaintiff in an action has declared (i. e. delivered his declaration) it is for the defendant to consider whether, on the face of his declaration, he appears to be entitled in point of *law* to the redress he seeks, and in the form of action which he has chosen. If he appears not to be so entitled in point of law, and this by defect either in the *substance* or the *form* of the declaration, i. e. as disclosing a case insufficient on the merits, or as framed in violation of any of the rules of pleading, the defendant is entitled to except to the declaration on such ground. In so doing, he is said to *demur*, and this kind of objection is called a *demurrer;* which title see. —*Stephen's Pl.* 48. As to demurring in equity, see tit. *Demurrer in Equity.*

DEMURRAGE. In charter-parties clauses are usually inserted to the effect, that a specified number of days shall be allowed for loading and unloading the vessel, and that it shall be lawful for the freighter to detain the vessel for those purposes *a further specified time* on payment of a daily sum. The freighter (or the person who claims and receives the goods under the bill of lading) is liable to pay for every day beyond the time agreed upon the sum specified in the charter-party or bill of lading. This delay, and the payment agreed upon for it, are called *demurrage*, which may be recovered in an action by the owners or masters, or both, according to the form of the charter-party or bill of lading.—*Abbott on Shipping*, 303.

DEMURRER *at Law* (from the

Latin *demorari*, or French *demorrer*, to "wait" or "stay"). Imports, according to its etymology, that the objecting party will not proceed with the pleading, because no sufficient statement has been made on the other side, but will *wait* the judgment of the court whether he is bound to answer. A demurrer may be for insufficiency either in *substance* or *form*, for "the law requires in every pleading two things; the one, that it be in matter sufficient; the other, that it be deduced and expressed according to the forms of law; and if either the one or the other of these be wanting, it is cause of demurrer."—*Hob.* 164. It is either *general* or *special*. A *general* demurrer excepts to the sufficiency in general terms, without showing specifically the nature of the objection, and is employed when that objection is on matter of *substance*. A *special* demurrer adds a (minute and exact) specification of the particular grounds of exception, and is necessary where they turn on matter of *form* only, i. e. where enough appears, notwithstanding such objection, to entitle the opposite party to judgment, as far as relates to the merits of the cause.

DEMURRER IN EQUITY. A demurrer in equity is of much the same nature as a demurrer at law, with the difference that the former is applied to the plaintiff's *bill*, and the latter to his *declaration*. A demurrer in equity amounts to an admission of the truth of the plaintiff's bill, or of that portion of it to which the demurrer refers, but insists upon some defect or objection apparent on the face of it, which may be offered in bar of the suit; as if the facts stated in the bill do not entitle the plaintiff to any relief, or if it be so framed as to be insufficient to found a definitive decree upon, &c., and this demurrer in equity (the same as in law) in form prays the judgment of the court, whether the defendant can be compelled to answer the plaintiff's bill. —*Gray's Chan. Prac. p. 5, 6; 3 Bl.* 446.

DEMURRER TO EVIDENCE. A demurrer to evidence is analogous to a demurrer in pleading; the party who demurs declaring that he will not proceed, because the evidence offered by the opposite party (although true) is insufficient in point of law to maintain the issue. Upon joinder in demurrer by the opposite party, the jury are usually discharged from giving any verdict; and the demurrer being entered *on record*, is afterwards argued and decided by the court in *bank*. — *Steph. on Plead.; Smith's Action at Law.*

DEMURRER TO INDICTMENTS. This is a demurrer incident to criminal cases, and is, when the fact, as alleged, is allowed to be true; but the prisoner joins issue upon some point of law in the indictment, by which he insists that the fact, as stated, is no felony, treason, or whatever the crime is alleged to be. Thus, for instance, if a man were indicted for *feloniously* stealing a dog, which is an animal in which no valuable property can be had, and therefore it is not a felony, but only a civil trespass to steal it: in this case, the party indicted may *demur* to the indictment, denying it to be felony, though he confesses the act of taking it.—*4 Bl.* 333.

DEMURRER BOOK. When a cause between two parties is *at issue* (i. e. when some distinct question has been raised between them, which they have agreed to refer to the proper mode of trial), the next proceeding in the action is to make a transcript upon paper of the whole pleadings that have been delivered on the one side and on the other. This transcript, when the issue joined is an issue in

law, is called the "*demurrer book*;" when an issue in fact, it is called the "issue." The making of this transcript, upon an issué in law is called "*making up the demurrer book*;" upon an issue in fact, "*making up the issue.*" —*Steph. on Pl.* 78.

DEMY-SANGUE or SANKE. Half blood; as when a man marries a woman, and has by her a son or a daughter, and the wife dies, and then he marries another woman, and has by her also a son or daughter: now, these two sons are to a certain extent brothers, or, as they are termed, half brothers, or brothers of the half blood, i. e. brothers by the father's side, because they had both one father, and are both of his blood, and not brothers at all by the mother's side, because both had different mothers.—*Les Termes de la Ley.*

DE NON DECIMANDO. A prescription *de non decimando*, is a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them; as in the case of a king, whose prerogative discharges him from all tithes: so a vicar, who shall pay no tithes to the rector, nor the rector to the vicar; for *ecclesia decimas non solvit ecclesiæ.*—*Cro. Eliz.* 511; 2 *Bl.* 31.

DE NON RESIDENTIA CLERICI REGIS. An ancient writ, excusing a parson employed in the king's service for being a non-resident.—2 *Inst.* 624; *Cowel.*

DE ONERANDO PRO RATA PORTIONIS. A writ that formerly lay for one who had been distrained for rent which ought to have been paid by others proportionably with him.—*F. N. B.* 234.

DE QUIBUS SUR DISSEISIN. A writ of entry so called.—*F. N. B.* 191; *Cowel.*

DE SON TORT DEMESNE (*of his own wrong*). Words used in an action of trespass by way of reply to the defendant's plea. For example A. sues B. in an action of trespass, B. answers, that he did that which A. calls a trespass, by the command of C. his master; A. replies, that B. did it *de son tort demesne, sans ceo que* C. *luy command modo et forma*, i. e., that B. did it *of his own wrong* without having been commanded by C. in manner and form as B. stated, &c. —*Cowel.*

DE VENTRE INSPICIENDO (*of inspecting the belly*). Where a widow is suspected of feigning herself pregnant, with a view to produce a supposititious child, the presumptive heir may have a writ, *de ventre inspiciendo*, to examine whether she be pregnant or not, and if she be pregnant, to keep her under a proper restraint till she be delivered.—3 *Cruise*, 365.

DE VICINETO, *Jury* (*of or from the neighbourhood*). In ancient times the jury, instead of being selected, as at present, from among strange and indifferent persons, consisted of those who were witnesses to the facts to be investigated at the trial, or at least in some measure personally cognizant of them; and who, consequently, in their verdict, gave not, as now, the conclusion of their judgment, but their testimony as to facts, which they had antecendently known. Accordingly, the *venire facias* issued to summon a jury in those days did not as now direct the jurors to be summoned from the body of the county, but from the *immediate neighbourhood* where the facts occurred, and from among those persons who best knew the truth of the matter.—*Steph. on Pl.* 144.

DEN AND STROND. A liberty for ships or vessels to run aground or come ashore, granted to the barons

of the cinque-ports by Edw. 1.—*Cowel.*

DENARII DE CARITATE. Whitsun-farthings or Pentecostals, or customary oblations made to cathedral churches in the time of Pentecost, when the parish priests and many of their people went in procession to visit their mother church. This voluntary custom was afterwards changed into a settled due, and commonly charged on the parish priest. *Cart. Abbat. Glaston. MS.* 15.

DENARIUS DEI. God's penny, or earnest-money given by him who enters into a contract, to signify that he is bound thereby. It is so called, because in former times the piece of money so given to seal the contract was given to God, i. e., to the poor or to the church.—*Cart.* 31 *Edw.* 1.

DENARIUS TERTIUS COMITATUS. In the fines and other profits arising from the county courts, two parts were reserved to the king, and a *third part or penny* to the earl of the *county*, who either received it in specie at the assizes and trials, or had an equivalent composition paid from the Exchequer.—*Paroch. Antiq.* 418; *Cowel.*

DENELAGE. See *Danelege.*

DENIZEN. A *denisen* is an alien born, but who has obtained, *ex donatione legis*, letters patent to make him an English subject; and he is then considered in a kind of middle state, between an alien and a natural born subject, and partakes of both of them, being able to take lands by purchase or devise, which, as an alien, he could not; but cannot take by inheritance, for his parent, through whom he must claim, being an alien, had no inheritable blood, and therefore could convey none to the son.—11 *Rep.* 67; 1 *Bl.* 374.

DENUDED. A term sometimes used in the law; and is equivalent to stripped, deprived of, or cut off.

DEODAND (*Deo dandum*). Any personal chattel that is the immediate occasion of the death of any reasonable creature, and which is forfeited to the king, to be applied to pious uses, and distributed in alms by his high almoner, though formerly destined to more superstitious purposes. It seems to have been originally designed, in the blind days of popery, as an expiation of the souls of such as were snatched away by sudden death; and for that purpose ought properly to have been given to holy church: in the same manner as the apparel of a stranger, who was found dead, was applied to purchase masses for the good of his soul. And this may account for that rule of law, that no deodand is due where an infant under the age of discretion is killed by a fall *from* a cart, or horse, or the like, not being in motion; whereas, if an adult person falls from thence and is killed, the thing is certainly forfeited. The true ground of this rule seems rather to have been, that the child, by reason of its want of discretion, was presumed incapable of actual sin, and therefore needed no deodand to purchase propitiatory masses; but every adult who died in actual sin, stood in need of such atonement, according to the humane superstition of the founders of the English law.—1 *Bl.* 300.

DEPARTURE. A departure in pleading is said to be, when a man quits or departs from one defence which he has first made, and has recourse to another: it is when his second plea does not contain matter pursuant to his first plea, and which does not support and fortify it.—2 *Wms. Saund.* 84, *n.* 11. A departure takes place when in any pleading the

party deserts the ground that he took in his last antecedent pleading, and resorts to another.—*Stephen on Pleading*, *p.* 439. Hence, it is obvious, that a departure can never take place till the replication. The following is an example of a departure in pleading. In assumpsit, the plaintiffs, as executors, declared on several promises alleged to have been *made to the testator* in his lifetime. The defendant pleaded that she did not promise within six years before the obtaining of the original writ of the plaintiffs. The plaintiffs replied, that within six years before the obtaining of the original writ the letters testamentary were granted to them, whereby the action accrued *to them the said plaintiffs* within six years. The court held this to be a departure, as in the declaration they had laid promises to the *testator*; but in the replication alleged the right of action to accrue to *themselves as executors*. They ought to have laid promises to themselves as executors in the declaration, if they meant to put their action on this ground.—*Steph. on Plead.* 440.

DEPASTURING. The act of feeding cattle on pasture land; for doing which, at the request of another, an action lies; and the terms used in the declaration are, for "agisting, *depasturing*, and feeding of divers cattle, &c." on certain pastures, &c." —2 *Chit. Plead.* 44.

DEPENDENT. Depending upon; hanging upon, &c.

DEPONENT. He who deposes to, or makes a deposition or statement of any fact. A witness whose evidence is not given *vivâ voce*, but is taken down in writing, and then sworn to, is also so termed. Also he who makes an affidavit of any fact or facts is commonly so denominated.

DEPOPULATORES AGRORUM. By stat. 4 *H.* 4, 2, they appear to have been great offenders by the common law, and were so called, because by prostrating and ruining of houses, they seemed to *depopulate* towns.—13 *Eliz.* 10; *Cowel.*

DEPOSITION (*depositio*). The testimony of a witness put down in writing (after the manner of the civil law). And for this purpose, in courts of equity, *interrogatories* are framed, or questions in writing, which, and which only, are to be proposed to, and asked of the witnesses in the cause. When all the witnesses are examined, and the depositions published, they are read as evidence on the hearing of the cause.—*Newl. Pr.* 143; 3 *Bl.* 449. In the ecclesiastical courts also witnesses are examined, and their testimony taken down in writing, which is also called their *depositions*. It also sometimes signifies *degradation*, which see, under that title. 3 *Bl.* 101.

DEPRIVATION. One of the ways by which a parson or a vicar may cease to be so is by *deprivation*; which is first by sentence declaratory in the ecclesiastical court, for fit and sufficient causes allowed by the common law, or secondly, in pursuance of divers penal statutes, which declare the benefice void for some nonfeasance or neglect, or else for some malfeasance or crime.—*Dyer*, 108; *Jenk.* 210; 1 *Bl.* 303.

DERAIGN or DEREYN (from the Fr. *deraigner*, to confound or disorder). In its general signification it means *to prove*, as *dirationabit jus suum hæres propinquior*, he proved that land to be his own.—*Glanvil, lib.* 2, *c.* 6. In its literal import it signifies displacing, putting out of order, &c. as *deraignment* or departure out of religion, which is applied to those

The word *dividenda* was anciently used for an indenture.—28 *Edw.* 1, *st.* 3, *c.* 2; *Cowel.*

DIVINE SERVICE, *Tenure by.* An ancient tenure; the obligation annexed to which was, that the tenants should perform some special *divine service;* as to sing so many masses, to distribute such a sum in alms and the like. Since the statute of *quia emptores,* 18 Ed. 1, none but the king can give lands to be holden by this tenure.—2 *Bl.* 102.

DIVISA. A devise of goods by last will and testament, and sometimes the will itself. Sometimes, also, it is taken for a charity given by will; sometimes a parcel or portion of land devised by last will; sometimes for a boundary of a place or farm; and sometimes for an award; and in such various significations is it used, that the sense can only be determined by the other words with which it is accompanied.—*Leg. Inæ, c.* 44; *Eadmerus, lib.* 1, *p.* 8; *Cowel.*

DIVORCE (*divortium*). The separation of husband and wife by the operation of the law. There are two kinds of divorce, the one total, the other partial; the one *a vinculo matrimonii,* the other merely *a mensa et thoro.* The total divorce *a vinculo matrimonii* must be for some canonical cause of impediment, and those existing before the marriage, as is always the case in consanguinity; not supervenient, or arising *afterwards,* as may be the case in affinity or corporeal imbecility. For, in causes of total divorce, the marriage is declared null, as having been absolutely unlawful *ab initio;* and the parties are therefore separated *pro salute animarum;* for which reason no divorce can be obtained but during the life of the parties. In these divorces, the wife, it is said, shall receive all again that she brought with her; because the nullity of the marriage arises through some impediment, and the goods of the wife were given for her advancement in marriage, which now ceaseth; but this is where the goods are not spent; and if the husband give them away during the coverture without any collusion, it shall bind her: if she knows her goods are unspent, she may bring an action of detinue for them; but, as to money, &c., which cannot be known, she must sue in the spiritual court.—*Dyer,* 62. This divorce enables the parties to marry again, and to do all other acts as if they had never been married. Divorce *a mensa et thoro* is when the marriage is just and lawful *ab initio,* and therefore the law is tender of dissolving it, but for some supervenient cause it becomes improper or impossible for the parties to live together; as in case of intolerable ill-temper or adultery in either of the parties. In this case the law allows alimony to the wife; which is that allowance which is made to a woman for her support out of the husband's estate; being settled at the discretion of the ecclesiastical judge, on consideration of all the circumstances of the case. This is sometimes called estovers; for which, if he refuses payment, there is (besides the ordinary process of excommunication) a writ at common law, *de estoveriis habendis,* in order to recover it. It is generally proportioned to the rank and quality of the parties. —1 *Bl.* 440 *to* 442.

DOCK. Is that part of a criminal court in which the prisoner stands during his trial.

DOCKET, *Striking a.* A phrase used in the practice of bankruptcy. It refers to the entry of certain papers at the Bankrupt Office, preliminary to the prosecution of the fiat against a trader who has become

bankrupt. These papers consist of the affidavit, the bond, and the petition of the petitioning creditor; and their object is to obtain from the lord chancellor his fiat, authorising the petitioner to prosecute his complaint against the bankrupt, either in her Majesty's Court of Bankruptcy in London, or in one of the District Courts of Bankruptcy in the country. The affidavit of the petitioning creditor states that the party is indebted to the deponent in the sum required to constitute a petitioning creditor's debt, and that the party has become a bankrupt within the meaning of the statutes. The affidavit has to be left at the office of the secretary of bankrupts, who makes an entry in the "docket book," and this seems to be what is technically called *striking the docket*. The bond formerly entered into by the petitioner is by the recent statute (5 & 6 Vict. c. 122) no longer required; but upon the affidavit being left at the office, the clerk prepares the petition, annexes the affidavit to it, and thereupon obtains the lord chancellor's fiat.—*Arch. Bankruptcy, by Flather, i.* 92; *ii.* 14.

DOG-DRAW. Defined to be an apparent deprehension of an offender against venison in the forest. There are four of these mentioned by Manwood in his Forest Law, viz. Stable-stand, Dog-draw, Black-bear, and Bloody-hand. Dog-draw, he says, is where any man has stricken or wounded a wild beast, by shooting at him either with a cross-bow, long-bow, or otherwise, and is found with a hound or other dog *drawing* after him to receive the same.—*Cowel.*

DO LAW (*facere legem*). To do law signifies the same as to make law.—23 *Hen.* 6, *c.* 14.

DOLE (*dola*, Sax. *dæl*, from *delan*, to divide, to distribute). A part or portion of a meadow is so called; as *dole meadow* (anno 4 Jac. c. 11), where several persons have shares. This word still retains the signification of share, portion, &c.; as to *dole* out any thing among so many poor people, &c., signifying to deal or distribute to them.—*Cowel.*

DOM-BOC. See tit. *Dome-book.*

DOME or DOOM (Sax. *dom.*) A judgment, sentence, ordinance, or decree. Thus in the Black Book of Hereford, fol. 46, the homager's oath ends thus: "So help me God at his holy *dome*, and by my trowth," &c.—*Cowel.*

DOME-BOOK (*liber judicialis*). A book compiled during the time of Alfred, and under his immediate superintendence, for the general use of the country. This book is said to have been extant so late as the reign of King Edward the Fourth, but is now unfortunately lost. It contained, we may probably suppose, the principal maxims of the common law, the penalties for misdemesnors, and the forms of judicial proceedings. Thus much may at least be collected from that injunction to observe it, which we find in the laws of King Edward the elder, the son of Alfred: "Omnibus qui reipublicæ præsunt etiam atque etiam mando, ut omnibus equos se præbeant judices, perinde ac in judiciali libro (Saxonico *domboc*), scriptum habetur; nec quicquam formident quin jus commune (Saxonice *folcrihte*), audacter libereque dicant."—1 *Bl.* 65.

DOMESDAY-BOOK (*liber judiciarius, vel censualis Angliæ*). An ancient work compiled in the time of William the Conqueror, consisting of two volumes, and which contain the details of a great survey of the kingdom. One volume comprehends all the counties in England, excepting Northumberland, Cumberland, West-

moreland, Durham, and part of Lancashire, which were not surveyed, and also excepting Essex, Suffolk, and Norfolk, which are comprehended in the other volume. It was begun by five justices assigned for the purpose in each county, in the year 1081, and was finished in 1086. The Domesday-book made by William the First, referred to the time of Edward the Confessor, as that of King Alfred did to the time of Ethelred. When any question arises whether or not lands are of ancient demesne, it is always to be decided by this *Domesday-book*, from whence there is no appeal; nor is there any averment to be made against it; and such was the authority of the book, that even William the Conqueror himself submitted some cases wherein he was concerned, to be decided by it.—*Cowel*; 2 *Bl.* 49.

DOMES-MEN. Men in the quality of judges appointed to *doom* and determine suits and quarrels. Hence the Scotch phrase *falling of domes*, signifying reversing of judgment or annulling of decrees.—*Cowel.*

DOMICILE. Is the fixed and permanent residence of a party in a country not his own. The law applicable to persons in such a position is mainly founded on the law of nations, and not on the municipal law of any particular country, and is termed *lex domicilii.* Under it questions of grave importance frequently occur with regard to marriages and divorces celebrated or pronounced in foreign lands, the legitimacy of children, and the validity of wills.—*Rogers's Eccl. Law*, 850, *&c.*

DOMIGERIUM. Damage, danger. It also sometimes signifies the power of one over another.—*Bract. lib.* 4, *t.* 1, *c.* 19; *Cowel.*

DOMINA. A title formerly bestowed on those honourable women who in their own right of inheritance held a barony.—*Paroch. Antiq.* 78.

DOMINICUM. See tit. *Demesne.*

DOMINIUM. Right or legal power. And *dominium directum* and *dominium utile* are terms by which the rights of the superior and vassal are distinguished in the Scotch law. The right of superiority is termed the *dominium directum*, as being the highest and most ancient of the town. The vassal's right is termed the *dominium utile*, because under it he enjoys the whole fruits and produce of the estates.—*Tomlins.*

DOMINUS. In ancient times this word being prefixed to a name usually denoted the person to be a knight or a clergyman; and Dr. Cowel seems to think that this title was given generally to gentlemen of quality, and especially to lords of manors.—*Cowel.*

DOMO REPARANDA. A writ which lies for a man against his neighbour, calling upon him to repair his house, by the fall of which he fears damage will be done to his own.—*Reg. Orig.* 153.

DONATIO CAUSA MORTIS (*a donation in prospect of death*). A disposition of property when on one's death-bed. As when a person in his last sickness, apprehending his dissolution near, delivers, or causes to be delivered to another, the possession of any personal goods to keep in case of his decease. This gift, if the donor die, needs not the assent of his executor; yet it shall not prevail against creditors; and it is accompanied with this implied trust, that if the donor live, the property thereof shall revert to himself, being only given in contemplation of

death, or *mortis causa*.—*Prec. Chan.* 269; 2 *Bl.* 514.

DONATIVE ADVOWSON. See tit. *Advowson*.

DONIS, *Statute de*. The stat. 13 Edw. 1, c. 1, is called the *statute de donis conditionalibus* (of conditional gifts). This statute revived in some measure the ancient feodal restraints which were originally laid on alienations, by enacting that from thenceforth the will of the donor be observed; and that tenements given to a man and the heirs of his body should at all events go to the issue, if there were any; or if none, should revert to the donor.—2 *Bl.* 112.

DONOR and DONEE. He who gives lands or tenements to another in tail is called the *donor*; and the person to whom they are given is called the *donee*.—*Cowel*.

DOTE ASSIGNANDA. A writ that lay for a widow, where it was found by office that the king's tenant was seised of tenements in fee or fee-tail at the day of his death, and that he held of the king in chief, &c., in which case the widow came into chancery, and there made oath, that she would not marry without the king's leave, anno 15 Edw. 3, c. 4, and hereupon she had this writ to the escheators, for which see *Reg. of Writs, fol.* 297; and *F. N. B. fol.* 263. These widows are called the *king's widows*.

DOTE UNDE NIHIL HABET. A writ of dower that lay for the widow against the tenant, who bought land of her husband in his lifetime, whereof he was seised solely in fee simple or fee tail, in such a way as that the issue of them both might have inherited it.—*F. N. B. fol.* 147.

DOTIS ADMENSURATIONE. See tit. *Admeasurement*.

DOUBLE DEMISE. See tit. *Demise*.

DOUBLE FINE. A fine *sur done, grant, et render* was called a double fine, because it comprehended the fine *sur cognizance de droit come ceo, &c.* and the fine *sur concessit*, and might be used to create particular limitations of estates; whereas the fine *sur cognizance de droit come ceo, &c.* conveyed nothing but an absolute estate, either of inheritance or at least of freehold.—*Salk.* 340; 2 *Bl.* 353.

DOUBLE PLEA. It is one of the first rules of pleading that "pleadings must not be double;" and this rule applies both to the declaration and the subsequent pleadings. Its meaning with respect to the former is, that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported. With respect to the subsequent pleadings, the meaning is, that none of them is to contain several distinct answers to that which preceded it; and the reason of the rule in each case is, that such pleading tends to several issues in respect of a single claim. The word *double*, as used with reference to pleas, is sometimes synonymous with *several*. Thus, leave to plead *double* is frequently used synonymously with leave to plead *several pleas*, which a defendant is permitted to do in certain cases. Pleading several pleas, however, is altogether different from pleading *a plea* containing within itself several distinct answers in violation of the rule of pleading against duplicity.—See *Steph. Plead.*; 1 *Chit. Plead.*

DOUBLE QUARREL (*duplex querela*). A complaint made by any

clerk or other person to the archbishop of the province against any inferior ordinary, for delaying justice in any ecclesiastical cause; as for refusing to give sentence, or to institute a clerk presented, or such like: the effect of which is, that the archbishop, taking cognizance of such delay, directs his letters to the clerks of his province, commanding and authorising them to admonish the said ordinary within nine days to do the justice required, or otherwise to cite him to appear before him or his official on a day mentioned, to show cause why he so delayed, &c. It seems to be called a *double quarrel* because it is usually made against the judge and him at whose request justice is delayed.—*Les Termes de la Ley.*

DOUBLENESS IN PLEADING. See tit. *Double Plea.*

DOW (from the Lat. *do*). To give or to endow.—*Cowel.*

DOWAGER (*dotata, dotissa*). A widow who is *endowed*, or who has a jointure. This word is applied more particularly to the widows of princes, dukes, and other personages of rank and title.—*Cowel.*

DOWER (*Dos*). By a woman's intermarriage with her husband, she becomes entitled, upon surviving him, to an estate for life in a third part of all such estates of inheritance of which he was solely seised during the coverture, and to which any issue she might have had might by possibility have been heir. This interest of the wife is termed her *dower*, and is the provision which the common law has made for her support and the nurture and education of her younger children.—1 *Roper, Husb. & Wife*, 362, 460.

DOWERESS. She who is entitled to or is in the enjoyment of *dower.*

DOWRY (*dos mulieris*). The portion or property which the wife brings her husband in marriage; otherwise called *maritagium*, marriage goods. Some authors have confounded *dower* with *dowry*, but they are quite distinct, as will be seen on referring to tit. *Dower.*

DOZEIN (*decenna*). This word is used in the statute for view of *Frankpledge*, and signifies that territory over which a *doziner* or *deciner* had jurisdiction.—18 *E.* 2; see *Deciners.*

DREIT-DREIT or DROIT-DROIT (*jus duplicatum*). A double right. For it is an ancient maxim of the law, that no title is completely good unless the right of possession be joined with the right of property, which right is then denominated a double right, *jus duplicatum*, or *droit-droit.*—*Co. Litt.* 266; *Bract. lib.* 5, *tr.* 3, *c.* 5.

DRENCHES or DRENGES (*drengi*). Tenants in capite, who, at the coming of William the Conqueror, being put out of their estates, were afterwards, upon complaint being made to him, restored to them. Sir Edward Coke defines them to be free tenants of a manor. *Domesday*, tit. *Lestresse.* The tenure by which these persons held their lands was called *drengage, vel servitium Drengarii—Spelm.*

DRENGAGE. See *Drenches.*

DRIFT OF THE FOREST (*agitatio animalium in foresta*). An exact view or examination of the number of cattle that are in a forest, in order that it may be known whether it be overcharged or not, and whose the beasts are; and whether they are commonable beasts, &c.—*Manwood;* 4 *Inst.* 309.

DRINKLEAU (Sax. *drinc-leau*). A contribution of the tenants towards a potation; or ale provided by them to entertain the lord or his steward; a *Scot-ale*.—*Cowel*.

DROFLAND or DRYFLAND (from the Sax. *dryfeul, i. e. driven*). A quit rent or yearly payment, formerly made by some tenants to the king, or their landlords, for *driving* their cattle through the manor to fairs or markets.—*Cowel*.

DROIT (Fr. signifying *right*). This word is used in various senses in the law, but in its most general acceptation signifies a *right*. It is thus used by Blackstone. If a father be tenant in tail, and alienes the estate tail to a stranger in fee, the alienee thereby gains the *right* of possession, and the son has only the mere *right* of property; and hence it will follow, that one man may have the *possession*, another the *right* of possession, and a third the *right* of property. So when one possesses a thing which was taken from another wrongfully, the claim of him who is properly entitled to such is termed his *right*. There are also numerous writs (many of which are now obsolete) which are termed writs of *right*, and are of very high authority.—2 *Bl.* 198; *Les Termes de la Ley*. See also *Dreit-dreit*.

DRY EXCHANGE (*cambium siccum*). In former times was an *exchange*, where something was pretended to pass on both sides, although in truth nothing passed but on one side, whence it was termed *dry*. It is said to have been devised for the purpose of disguising or covering usury.—3 *H.* 7, *c.* 5.

DRY RENT. The same as *redditus siccus*, which see under tit. *Rent*.

DUCES TECUM (*bring with thee*). In an action at aw, when a person who is not a party to the cause has in his possession any written instrument, &c. which would be evidence at the trial, he must be served with a writ called a *subpœna duces tecum*, which commands him to *bring it with him* and produce it at the trial. Upon being served with a copy of this *subpœna*, he must attend at the trial with the instrument required, and produce it in evidence, unless he has some lawful or reasonable excuse for withholding it, of the validity of which excuse the court and not the witness is to judge.—1 *Arch. Pract.* 380.

DUCES TECUM LICET LANGUIDUS. A writ formerly in use and directed to the sheriff upon his having made a return that he could not bring his prisoner without danger of death, he being *adeo languidus*; whereupon the court granted a *habeas corpus* in the nature of a *duces tecum licet languidus*.—*New Book of Entries*.

DUCHY COURT OF LANCASTER. See this under tit. *Chancellor*.

DUCKING STOOL. See *Cucking Stool*.

DUEL. See *Battel*.

DUM FUIT INFRA ÆTATEM. When a person of full age wishes to recover lands which he had aliened *while under age*, he may resort to a writ of the above title for recovery of the same, and when recovered may take them back again, and by his entry thereon shall be remitted to his ancestors' right. So in the case of the death of the infant, his heir might have had this writ.—*F. N. B.* 192.

DUM FUIT IN PRISONA (*while he was in prison*). A writ of entry that lay to restore a man to his lands who had aliened them under duress of imprisonment.—2 *Inst.* 482.

DUM FUIT NON COMPOS MENTIS (*while he was of unsound mind*). A writ that lay for a man, who had recovered his understanding, after having while insane aliened his lands, for recovery of those lands from the alienee, because not being of sane memory at the time of the alienation, he was not capable of making a grant.—*F. N. B.* 202.

DUODENA. A jury of twelve men. —*Tho. Walsing.*; *Cowel.*

DUODENA MANU. In former times when a defendant was accused of a very great offence of which there was no proof, he was obliged to purge himself by the oaths of *twelve* witnesses; which were called *jurare duodecima manu* or *duodena manu*.—*Leg. Hen.* 1, *c.* 64.

DUPLEX QUERELA. See tit. *Double Quarrel.*

DUPLICATE. This word, as used by Crompton, signifies the second letters patent granted by the Lord Chancellor in a case wherein he had formerly done the same, and were therefore held as void. Any copy or transcript of a deed or writing is called a duplicate. Also a second letter written and sent to the same party and to the same purpose as the former for fear of the miscarriage of the first, is called a *duplicate*.—*Cromp. Jurisd.* 215; *Les Termes de la Ley.*

DUPLICITY in pleading. See *Double Plea.*

DURANTE ABSENTIA (*during absence*). When an administration is granted while the executor is out of the realm it is said to be granted *durante absentia*, and continues in force until his return.—1 *Lutw.* 342; 2 *Bl.* 503.

DURANTE LITE (*during the continuance of the suit*). The phrase is equivalent to that of *pendente lite*, and is frequently used in reference to *alimony*, which is a sum allotted by the ecclesiastical court for the maintenance of the wife whilst the suit between her and her husband is pending. See also tit. *Administration.*

DURANTE MINORE ÆTATE (*administration*). See tit. *Administration.*

DURESS (*duritia*). If a man through fear of death or mayhem, is prevailed upon to execute a deed, or do any other legal act, these, though accompanied with all the other requisite solemnities, may be afterwards avoided, if forced upon him by a well-grounded apprehension of losing his life, or even his limbs in the case of his non-compliance; and the same is also a sufficient excuse for the commission of many misdemeanors; and the constraint a man is under in these circumstances is called in law *duress*, of which there are two sorts: 1. *Duress of imprisonment*, where a man actually loses his liberty. 2. *Duress per minas*, where the hardship is only *threatened* and impending.—2 *Inst.* 483; 1 *Bl.* 130.

DUTCHY COURT OF LANCASTER. See tit. *Chancellor.*

DUTY. Anything that is known to be *due* by law, and thereby recoverable, is said to be a *duty* before it is recovered, because the party interested in the same has power to recover it.—1 *Lil.* 495.

E.

EALHORDA. A word mentioned in a charter of Hen. II. to the Abbott of Glastonbury, and signifies the privilege of assigning and selling ale and beer.—*Cowel.*

EALDERMAN. An officer of high importance among the Saxons, and held much the same rank as *earl* among the *Danes*, and among us of the present day they are called *aldermen*.—*Les Termes de la Ley.*

EAT INDE SINE DIE (*that he go from thence without a day*). When judgment is given for the defendant and the cause is at an end, he may *go thereof without a day, eat inde sine die*, i. e. without any further continuance or adjournment of the cause, the king's writ commanding his attendance being now fully satisfied and his innocence publicly cleared.—3 *Bl.* 316, 399.

EATAGE or EDDISH. The grass or pasture *eaten* by cattle who have been put upon land to be fed or depastured, or more correctly speaking the use of growing grass or herbage for the purpose of being eaten by cattle.—*Per Abinger, C. B. in Sutton v. Temple*, 12 *Mee. & W.* 62.

EBEREMORTH or EBEREMORS. See tit. *Aberemurder.*

ECCLESIA (*Lat.*) In law proceedings signifies a parsonage.—*Fitz. Nat. Brev.* 32.

ECCLESIASTICAL CORPORATIONS. See tit. *Corporation.*

ECCLESIASTICAL COURTS. See *Courts Ecclesiastical.*

EDDISH. See title *Eatage.*

EFFLUXION OF TIME. The flowing of time. When used in leases and other conveyances, it refers to the conclusion or *expiration* of a term of years, or any specified period of time, in the natural course of events, in contradistinction to the *determination* of the term by the act of the parties or some unexpected or unusual incident. In the former case the period is said to expire *by the efflluxion of time*, in the latter it is *determined* or put an end to. See tit. *Determination.*

EFFORCIALITER. With military force.—*Cowel.*

EFFRACTORES (Lat.) Burglars, housebreakers.—*Cowel.*

EFFUSIO SANGUINIS. The mulct, fine, wite, or penalty imposed by the old English laws for the shedding of blood, which the king granted to many lords of manors. This with other privileges was granted to the abbot of Glastonbury.—*Cartular. Abbat. Glaston. MS.* 87.

EJECTIONE CUSTODIÆ (*ejectment de garde*). A writ which lay against him who turned out the guardian from any land during the minority of the heir.—*F. N. B.* 139; *Cowel.*

EIGNE (Fr. *aisné*). The first-born or eldest. *Bastard eigné* and *mulier puisné* are thus described by Blackstone. When a man has a bastard son and afterwards marries the mother, and by her has a legitimate son, who in the language of the law is called a *mulier*, or, as Glanvil expresses it, *filius mulieratus*; the woman before marriage being *concubina* and afterwards *mulier*. Now here the *eldest* son is bastard, or bastard eigné; and the younger son is legitimate or *mulier puisné*.—2 *Bl.* 248.

EIRE or EYRE (from the old French word *eire*, i. e. *iter*, a journey). Justices in *eyre* or *eire* were itinerant justices, or, as Bracton calls them, *justiciarii itinerantes*. They were instituted by Henry the Second, who having divided the kingdom into six circuits, commissioned these newly created judges to travel through the various counties comprised within

these circuits, and therein to administer justice and try writ of assize. These remedies are said to have been then first invented; for before that period all causes were usually terminated in the county courts, according to the Saxon custom; or before the king's justiciaries in the *aula regis*, in pursuance of the Norman regulations. Hence have originated our justices of assize and *nisi prius*. The *eyre* of the forest also was nothing but the justice seat, which was by ancient custom held every three years by the justices of the forest journeying up and down for that purpose.—*Crompt. Jurisd.* 156; *Skene*; 4 *Bl.* 422.

ELECT, *To*. To choose one or other of two things. See tit. *Election*.

ELECTION. Choice, selection, &c. When a person is at liberty to choose which of two things he will have or will do, but is not at liberty to have or to do both, he is said to be put to his election: i. e. he is put to his choice. It is thus used by Cruise. "A daughter, by a will made when she was only nineteen years old, gave a legacy to her heir at law, and disposed of the real estate to another person, the question was whether (as the will was void as to the land, and good as to the legacy) the heir should have the land, and *also* the legacy, or be obliged to make his *election*."—6 *Cruise*, 18; *Toller's Ex.* 173.

ELECTION COMMITTEE. A committee of the House of Commons appointed to inquire into the validity of the election of its members. Its mode of proceeding is for the present regulated by 4 & 5 Vict. c. 58, the provisions of which are merely experimental, and in force only to a certain period. They are mainly as follows: Any person claiming to have had a right to vote at the election, or to be returned or elected, or alleging himself to have been a candidate thereat, may subscribe and present a petition to the House of Commons, complaining of an undue election or return, or that no return has been made according to the requisition of the writ, one or more of the petitioners being compelled to enter into a recognizance, with sureties, for payment of all costs, &c.; and the sitting member, or any other persons claiming to have had a right to vote at the election, are entitled to oppose the petition. The list of votes intended to be objected to, with a statement of the objections, is then delivered by either party to the general committee, appointed by the house for such business at the commencement of each session, and the petition is thereupon referred by the house to a select committee, consisting of a chairman and six other members, the former of whom is chosen by a select body called the chairman's panel, and the latter by the general committee. This select committee, who are sworn truly to try the matter before them, and are empowered to examine all witnesses on oath, a power not possessed by the house itself, then proceed to try the merits of the return or of the election, or both (admitting however no objection not set forth in the list of objections before delivered to the general committee), and by their decision, which is by the majority of voices, they determine whether the petitioner or the sitting member, or either, be duly returned or elected, or whether the election be void, or whether a new writ ought to issue.—2 *Steph. Bl.* 402; 4 & 5 *Vict. c.* 58.

ELEEMOSYNARY CORPORATIONS. See tit. *Corporation*.

ELEGIT (*he has chosen*). A writ of execution, so called because the plaintiff *has chosen* this particular

writ in preference to others. This is a judicial writ provided by the stat. Westm. 2, 13 Ed. 1, c. 18, and is used to recover either a debt, or damages, due upon a judgment, or upon the forfeiture of a recognizance taken in the king's court. By the common law a man could only come upon the goods and chattels and the present profits of lands by the other writs of execution, viz. *fieri facias* or *levari facias*, but could not obtain possession of the lands themselves; the statute therefore granted this writ, by which the defendant's goods and chattels are not sold, but only appraised; and all of them (excepting oxen and beasts of the plough) are delivered to the plaintiff at such reasonable appraisement and price in part satisfaction of his debt. If the goods are not sufficient, then the moiety or one half of his freehold lands which he had at the time the judgment was given are also to be delivered to the plaintiff, to hold till out of the rents and profits thereof the debt be satisfied; during the period the plaintiff so holds the lands, he is termed *tenant by elegit*, and the estate created by such tenancy is termed an *estate by elegit*.—3 *Bl.* 418; 2 *Bl.* 161; 2 *Inst.* 395.

ELISORS. In an action at law if the sheriff who should return the jury be in any way an interested party he is not then trusted to return the jury, but the *venire* shall be directed to the coroners, who in this, as in many other instances, are the substitutes of the sheriff to execute process when he is deemed an improper person. If any exception be made to the coroners, the venire shall be directed to two clerks of the court, or two persons of the county named by the court and sworn: and these two are called *elisors*, or electors, and shall impartially name the jury; and their return is final, no challenge being allowed to their array.—3 *Bl.* 354.

ELOINE (from the Fr. *eloigner*). To remove, to banish, or send away. In 13 Ed. 1, c. 15, it is thus used. If such as be within age be *eloined*, so that they cannot sue personally, their next friends shall be admitted to sue for them.—*Cowel*; 13 *Ed.* 1, *c.* 15.

ELONGATA or ELOIGNMENT. When a defendant has recovered judgment at common law in an action of replevin he shall have execution by a writ *de retorno habendo*, to have a return of the things distrained; but if the goods so distrained have been conveyed to places unknown to the sheriff, so that he cannot execute the writ, then the sheriff's return to such writ is that the goods, &c. are *eloigned*, i. e. taken out of his jurisdiction, or taken to some place unknown to him; and this return of the sheriff is called a return of *elongata* or *eloignment*.—2 *Arch. Pract.* 846, 847.

EMBARGO. A prohibition upon ships in time of war to leave the realm.—1 *Bl.* 270.

EMBEZZLEMENT. The offence of *embezzling*, called among the Romans *peculatus*, is a misprision, and is not a capital crime, but subjects the committer of it to a discretionary fine and imprisonment.—4 *Bl.* 121.

EMBLEMENTS (from the Fr. *emblavance de blèt*, corn sprung up, or put above ground). Various vegetables, which, although they are affixed to the soil, are deemed personal property, and on the death of the testator go to the executor and not to the heir. Those vegetables only which are raised annually by labour and manurance (which are considerations of a personal nature), are called *emblements*. The appellation of *emblements*, properly speaking, signifies the profits of sown land, but

in a larger sense it extends to roots planted or other *annual* artificial profit; it includes corn growing, hops, saffron, hemp, flax, and every other yearly production in which art and industry must combine with nature. —*Toller*, 149, 150; 2 *Bl.* 122; *Les Termes de la Ley.*

EMBRACEOR (Fr. *embrasour*). A person who during the trial of a cause between party and party comes to the bar with one of the parties (having received some reward so to do) and speaks in the case, or privily labours the jury, or stands there to survey or overlook them, thereby influencing them, and putting them in fear and doubt of the matter.—19 *H.* 7, 13; *Cowel.*

EMBRACERY. The offence of attempting to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainments and the like.—*Hawk. P. C.* 259; 4 *Bl.* 140.

EMENDALS (*emenda*). An old word used in the accounts of the Inner Temple; where so much in *emendals* at the foot of an account signifies so much in bank, in the stock of the house for the supply of all emergent occasions.—*Cowel; Spelman.*

EMENDARE (*emandam solvere*). To make amends or satisfaction for any crime or trespass committed; hence a capital crime, which could not be atoned by a fine or pecuniary composition was said to be *inamendabile.* —*Leges Canuti, c.* 2; *Leg. Ed. Confess. c.* 35.

EMENDATIO. The power of *amending* and correcting abuses, according to stated rules and measures: as *emendatio panni*, the power of *alnage, aulnage, ulnage*, or of looking to the assise of cloth, to see that it is of the just ell or due measure; *emendatio panis et cervisiæ*, the assising of bread and beer, or the power of supervising and correcting the weights and measures of them.—*Ken. Paroch. Antiq.* 196.

EMPANEL. See *Impanel.*

EMPARLANCE. See *Imparlance.*

EMPHYTEUSIS. An agreement by which one person binds himself to give his property over to another on a lease in perpetuity, and the other to accept the same upon the terms of paying a yearly canon or rent. The right which a person so acquires in the property of another is termed the *jus emphyteusis*, and has been defined as an hereditary usufruct of another's immoveable property, subject to a yearly rent or canon.—*Grotius's Introd. to Dutch Jur. by Herbert*, 224, 357.

EN AUTER DROIT (*in the right of another*). In another person's right, as opposed to in a person's own right. Thus, an executor, when he sues for the recovery of a debt due to the estate of his testator, is said to sue *en auter droit*, i. e., his right or title to sue for the debt is not a right or title of his own, but is founded upon his representative character as executor.

ENCHESON. An old French word used by our law writers, and signifies as much as the cause, occasion, or reason for a thing being done. —*Skene; Cowel.*

ENDOWMENT (*dotatio*). The assigning or bestowing dower upon a woman is termed *endowment;* the providing for the officiating ministers of a church by setting apart a certain portion of lands, &c. for their maintenance is also termed *endowment;* thus when the lords of manors

first built churches on their own demesnes, they usually *endowed* them with glebe or land.—2 *Bl.* 21.

ENFEOFF, *To.* The act of conveying an estate of freehold by deed of feoffment.—See further, tit. *Feoffment.*

ENFRANCHISE (Fr. *enfranchir*). To make free, to incorporate a person into any body politic or corporation, to make a person a free denizen. *Cowel.*

ENFRANCHISEMENT (Fr. *enfranchir*). The act of making a person free or the incorporating a person into any society or body politic; as when a person by charter is made denizen of England he is said to be *enfranchised;* and so is he who is made a citizen of London or other city, or a burgess of any town corporate, because he is thereby made partaker of those liberties that appertain to the corporation whereof he is enfranchised. *Enfranchisement* of copyholds is a conversion of copyhold into freehold tenure by a conveyance of the fee simple of the property from the lord of the manor to the copyholder, or by a release from the lord of all seignorial rights, &c., and such an enfranchisement destroys the customary descent, and also all rights and privileges annexed to the copyholder's estate.—*Scriven on Copyholds,* 616.

ENGROSSER. See *Ingrosser.*

ENGROSSING. The act of an *Ingrosser,* which see under title.

ENLARGE, *To.* To extend. The word is commonly applied in reference to the time given by the courts to parties to appear to oppose or support a rule. A rule calling upon the opposite party to show cause why he should not be at liberty to do the act or acts pointed out in the rule, specifies on what day cause is to be shown against it; but the courts will, on sufficient grounds being shown, extend the time for the party to show cause, which is termed "*enlarging* the rule;" and the rule itself is then frequently termed an "*enlarged* rule." So where an arbitrator extends the time for making his award, he is said to "*enlarge* the time" for that purpose.

ENLARGED RULES. See tit. *Enlarge.*

ENLARGEMENT, *By way of.* See tit. *Enure.*

ENLARGING RULE. See tit. *Enlarge.*

ENLARGING TIME. See tit. *Enlarge.*

ENPLEET. This word was formerly used for *implead.* Thus, "may *empleet* and be *empleeted* in all courts," i. e. may *sue* and be *sued* in all courts.

ENQUIRY, WRIT OF. See *Writ of Inquiry.*

ENROLMENT. See *Inrolment.*

ENTAIL, *To.* An estate is said to be *entailed,* when it is made descendible to some *particular* heirs only of the person to whom it is granted, instead of being descendible to his heirs general without restriction. When the grantor of an estate imposes this restriction or condition upon his grant, he is said "*to entail*" his estate. See tit. *Tail.*

ENTERING APPEARANCE. See tit. *Appearance.*

ENTERING JUDGMENT. The formal entry of the judgment of the court, upon record, is so termed. It

is necessary that this should be done before the party recovering the judgment bring debt on *scire facias* upon his judgment.—2 *Arch. Pr.; Lush's Pr.* 497.

ENTERPLEADER. See *Interpleader.*

ENTIERTE or ENTIRETY (from the Fr. *entier*, a whole, a total, &c.) It signifies the whole, in contradistinction to a moiety or part only.

ENTIRE TENANCY. This phrase is used in contradistinction to *several tenancy; entire tenancy* signifying the *entire* or sole possession in one man; *several tenancy* signifying a joint or common possession by two or more persons.—*New Book of Entries.*

ENTRY (Fr. *entrer*, to enter). The actual taking possession of lands or tenements by *entering* into the same; and is one of the remedies for injuries to real property which the law affords to the injured party when another person without any right has taken possession of his lands or tenements. The remedy by *entry* must be pursued in a peaceable and quiet manner, and not with force or strong hand. This remedy by *entry* takes place in three only out of the five species of ouster, viz. *abatement, intrusion*, and *disseisin*. For as in these the original entry of the wrong-doer was unlawful, they may therefore be remedied by the mere *entry* of him who has the right. But upon a *discontinuance* or *deforcement*, the owner of the estate cannot enter, but is driven to his action; for herein the original entry being lawful, and thereby an apparent right of possession being gained, the law will not suffer that right to be overthrown by the mere act or entry of the claimant.—3 *Bl.* 5, 174; 2 *Arch. Pr.* 764.

ENTRY, *Writ of.* A writ made use of in a possessory action directed to the sheriff, requiring him to command the tenant of the land that he render the demandant the land in question which he claims to be his right and inheritance; and into which as he says the said tenant had not entry but by (or after) a disseisin, intrusion, or the like, made to the said demandant, within the time limited by law for such actions; or that upon refusal he do appear in court on such a day to show why he had not done it. In our ancient books mention is made of the *degrees* within which writs of entry are brought. If they be brought against the party himself that did the wrong, then they only charged the tenant himself with the injury; "*non habuit ingressum nisi per intrusionem quam ipse fecit.*" But if the intruder, disseisor, or the like, has made any alienation of the land to a third person, or it has descended to his heir, that circumstance must be alleged in the writ, for the action must always be brought against the tenant of the land; and the defect of his possessory title, whether arising from his own wrong, or that of those under whom he claims, must be set forth. One such alienation or descent makes the first degree, which is called the *per*, because then the form of a writ of entry is this; that the tenant had not entry but *by* the original wrong-doer who alienated the land, or from whom it descended to him: "non habuit ingressum nisi *per* Gulielmum, qui se in illud intrusit, et illud tenenti dimisit." A second alienation or descent makes another degree called the *per* and *cui;* because the form of a writ of entry in that case is, that the tenant had not entry but *by* or *under* a prior alienee, *to whom* the intruder demised it: "non habuit ingressum nisi *per* Ricardum *cui* Gulielmus illud dimisit, qui se in illud intrusit." If more than two degrees (that is, two alienations or

descents) were past, there lay no writ of entry at the common law; but by the stat. of Marlbridge, 52 Hen. 3, c. 30, it was provided, that when the number of alienations or descents exceeded the usual degrees, a new writ should be allowed without any mention of degrees at all; and accordingly a new writ was framed called a writ of entry *sur disseisin* in the *post*, which only alleges the injury of the wrong-doer, without deducing all the intermediate title from him to the tenant; stating it in this manner, that the tenant had not entry unless *after* or subsequent to the ouster or injury done by the original dispossessor; "non habuit ingressum nisi *post* intrusionem quam Gulielmus in illud fecit," and rightly concluding that if the original title was wrongful, all claims derived from it must participate of the same wrong.

ENTRY AD COMMUNEM LEGEM. A writ of entry which lay for a reversioner after the alienation and death of the particular tenant for life, against him who was in possession of the land.

ENTRY AD TERMINUM QUI PRÆTERIIT. A writ of entry for the reversioner when the possession is withheld by the lessee, or a stranger, after the determination of a lease for years.

ENTRY CAUSA MATRIMONII PRÆLOCUTII. A writ of entry which lies for a woman who gives lands to a man in fee, or for life, to the intent that he may marry her and he does not.

ENTRY IN CASU CONSIMILI. See *Casu Consimili*.

ENTRY IN CASU PROVISO. A writ of entry provided by stat. Glouc. 6 Ed. 1, c. 7, and lies for a reversioner after the alienation, but during the life of the tenant in dower or other tenant for life.

ENTRY ON THE ROLL. In olden times the parties in an action, or their representatives, used to appear in open court, and make their mutual statements and counter statements *vivâ voce*, until they arrived at some definite point affirmed on the one side and denied on the other; or, in other words, until they arrived *at issue*. While this was going on, certain officers of the court, who sat beneath the judges, made a minute of the proceedings on a parchment roll, which was called the record, and was preserved as the official history of the suit. Long, however, after the above practice had fallen into disuse, and the method of delivering written forms of pleadings between the parties out of court had been adopted instead, the practice, in legal contemplation, was still supposed to exist, and the courts required that this roll should be actually made up; and when so made or entered up, it was termed the *issue roll*, and consisted of a transcript or entry of the pleading on both sides, down to the joinder of issue, together with an abbreviated form, termed the award of the venire. This entry upon the roll was abolished by rule of court, and the only entry upon record now required is the entry of the proceedings on record for trial, or upon the judgment roll, according to the nature of the case.—*R. H. T.* 4 *Will.* 4, *n.* 15.

ENTRY SINE ASSENSU CAPITULI. A writ of entry which lay for the successor of an abbot, bishop, &c. against such preceding abbot, bishop, &c. for having aliened lands or tenements belonging to the church without the assent of the chapter.—*Bracton; Britton;* 3 *Bl.* 180; *Cowel; F. N. B.* 148.

ENURE. To take effect, to take place, to operate, &c. Thus when a remainder-man releases all his right to the particular tenant and his heirs; such a release is said to *enure* by way of enlargement, i. e. the release of the fee by the remainder-man to the particular tenant *operates* (or *enures*) by enlarging the estate of such particular tenant.—*Litt.* 465.

EPISCOPALIA. Synods, pentecostals, and other customary payments from the clergy to their diocesan bishop; these dues were formerly collected by the rural deans, and by them transmitted to the bishop.—*Mon. Angl. tom.* 3, 61.

EQUITABLE ESTATE. See tit. *Estate.*

EQUITABLE MORTGAGE. The mortgage of an equitable estate or interest. Of this kind of mortgage perhaps the most familiar instance is the mortgage of what is termed an equity of redemption, being that interest which a mortgagor still retains in the mortgaged estate by virtue of his power to redeem the same on payment of the mortgage money. It is obvious that so long as a mortgagor has the power to redeem his mortgaged estate, that he still retains an interest or property therein; but this being such an interest as a *court of equity only* takes cognizance of, the mortgage of it is thence termed an *equitable mortgage.* The mortgagor in such case is termed an equitable mortgagor, and the mortgagee for a like reason an equitable mortgagee. *Burton's Comp.* 481, 515. See also tit. *Equity of Redemption.*

EQUITABLE MORTGAGEE. See tit. *Equitable Mortgage.*

EQUITABLE MORTGAGOR. See tit. *Equitable Mortgage.*

EQUITY (*æquitas*). There are few words which law writers have laboured so much to define as the word *equity;* and yet their definitions do not convey to the mind any distinct idea of its nature and essence; the truth is, like many other words which represent *incorporeal principles,* rather than *corporeal things,* its full force and meaning must be sought, not in any laboured definition, but in its operations. Equity then operates two ways, firstly, by abridging the law; secondly, by enlarging or adding thereto. As for example, when an act of parliament enacts, that whosoever does such a thing shall be a felon and suffer death, yet if mad men or infants, who have no discretion, do the same, they shall not be felons nor suffer death. So when the words of an act of parliament enact one thing, they are considered to enact all other things of the same degree. Thus *equity* corrects the generality of the law in some cases, and extends the words of the law in others; acting upon the spirit and real meaning of the law rather than upon the mere letter. Equity is said to be assistant to the jurisdiction of the courts of law; by removing legal impediments to the fair decision of a question in courts of law, and by compelling discoveries which may enable them to decide thereon, &c.; in short, whenever upon the principles of universal justice the interference of a court of judicature is necessary to prevent a wrong, and the positive law is silent as to it, a court of equity may be resorted to.—*Mitford's Equity Pleading,* 3 *Bl.* 426; *Les Termes de la Ley.*

EQUITY DRAFTSMAN. A term applied to those learned persons who are employed in drawing and settling drafts or pleadings in equity. They are usually junior counsel practising at the equity bar, and who frequently unite the duties of advocate with

those of the chamber counsel. Regarding them exclusively with reference to their functions in drawing and framing drafts and pleadings in equity, they may be considered as analogous to that learned body practising below the common law bar, under the denomination of "special pleaders."

EQUITY OF REDEMPTION. The right which *equity* gives to a mortgagor of *redeeming* his mortgaged estate after the appointed period has gone by for repayment of the sum of money which was due on the mortgage. The following description of a mortgage by Blackstone will further illustrate this subject. When one man borrows of another a sum of money (e. g. 200*l.*), and grants him an estate in fee, on condition that if he, the mortgagor, shall repay the mortgagee the said sum of 200*l.* on a certain day mentioned in the deed, that then the mortgagee shall reconvey the estate to the mortgagor; in this case, the land, which is so put in pledge, is *by law*, in case of nonpayment at the time appointed, for ever dead and gone from the mortgagor; and the mortgagee's estate in the lands is then no longer conditional but absolute; but here the courts of *equity* interpose; and though a mortgage be thus forfeited, and the estate absolutely vested in the mortgagee at the common law, yet they will consider the real value of the property mortgaged, compared with the sum borrowed, and if the estate be of greater value than the sum lent thereon, they will allow the mortgagor within any reasonable time to recall or *redeem* his estate; paying to the mortgagee his principal, interest, and expenses; and this privilege which *equity* allows to mortgagors is called the *equity of redemption.* —2 *Bl.* 158.

EQUITY OF A STATUTE. In all cases where the strict letter of a statute is corrected by reference to its general object and intention, the construction is said to be by *equity;* and this may be either by holding that a case within the words is not within the meaning, or that a case not within the words *is* within the meaning. Thus, where a statute provides that all who shall commit a certain act shall be deemed felons, yet a madman who does the act shall not be deemed a felon, for that would be contrary to the presumable intention; and his case would be said to be out of, or not within, the *equity* of the act. So, on the other hand, where a statute gave the owners of inheritances a remedy by action against such tenants holding for life or *years*, as should commit waste, the action was held maintainable against a tenant holding only for *one year* or less, for he would be deemed to be within the equity of the statute; for to him the provisions of the act were obviously intended to apply. The phrase so used is common to foreign as well as to English jurists, and is of very early occurrence in our law. —*Plowd.* 465-467; *Co. Lit.* 24 *b*; *Bract. lib.* 1, *c.* 4, *p.* 3 *a*; *Grotius de Æquitate. s.* 3; *Puffendorf, Elem. Jur. Un. lib.* 1, *ss.* 21, 22; *Com. Dig. tit. Parliament* (*R.* 10).

ERIACH. By the Irish Brehon law, in case of murder, the Brehon or judge used to compound between the murderer and the friends of the deceased who prosecuted him, by causing the malefactor to give unto them, or to the child or wife of him who was slain, a recompense, which they called an *eriach.*—4 *Bl.* 313.

ERRANT (*itinerant*). Supposed to be derived from the old word *erre*, i. e. *iter;* it is applied to justices who go the circuit, and to bailiffs at large. See tit. *Eire.*—*Cowel.*

ERRATICUM. A waif or stray, an *erring* or wandering beast.—*Cowel.*

ERROR, *Writ of.* After final judgment has been signed in an action, the unsuccessful party, if desirous of further investigation into the case, may bring a *writ of error*, which is a writ sued out of the Chancery, directed to the judges of the court in which judgment was given, and commanding them, in some cases, themselves to examine the record; in others, to send it to another court of appellate jurisdiction, to be examined, in order that some alleged error in the proceedings may be corrected. The first form of writ, called a writ of error *coram nobis* (or *vobis*), is where the alleged error consists of matter of *fact;* the second, called a writ of error generally, where it consists of matter of *law.* Where an *issue in fact* has been decided by a jury, there is no appeal in the English law from its decision, except by way of motion for a new trial; and its wrong determination is not *error* in that technical sense to which a writ of error refers. But there are certain facts which affect the validity and regularity of the legal proceeding itself (such as the defendant, a minor, appearing by attorney instead of by guardian, or the plaintiff or defendant having been a *married woman* at the commencement of the suit). Such facts, however late discovered, are *errors in fact,* and upon a writ of error are sufficient to reverse the judgment. To such cases the writ of *error coram vobis* applies, "because the error in fact is not the error of the judges, and reversing it, is not reversing their own judgment." But the most frequent case of error is when upon the face of the record the judges appear to have committed a mistake in *law;* and with regard to it, the rule is laid down that whenever, upon examination of the whole record, judgment appears to have been given for one of the parties when it should have been given for the other, this will be error in law; and it will be so whether the judges have really committed any error, or (as where judgment has been entered in a wrong form) the judges have had nothing to do with the cause of error. Upon error in law, the remedy is not by writ of error *coram nobis* (for that would be merely to make the same judges reconsider their own judgment), but by writ of error generally, which requires the record to be sent (though a transcript of it only is sent) into the court of appellate jurisdiction: but to support this writ of error, the error in law must be of a substantial kind; errors of mere form, by the Statutes of Amendments and Jeofails, not being sufficient. Upon a writ of error, suggesting error in law in the proceedings of any one of the three common law courts (the Queen's Bench, Common Pleas or Exchequer), the court of appellate jurisdiction is the Exchequer Chamber, consisting of the judges of the other two, and from that court to the House of Lords.—*Steph. Plead.* 120.

ERTHMIOTUM. A meeting of the neighbourhood; for it was customary in former days for the neighbours to meet and compromise differences among themselves by the award of their fellows.—*Leg. Hen.* 1, *c.* 57.

ESCALDARE. To scald; as *escaldare porcos,* to *scald* hogs; which is mentioned in the inquisition of the serjeancies and knights fees in the 12th and 13th years of King John, as being a species of *tenure in serjeanty* which existed in the counties of Essex and Hertford.—*Cowel.*

ESCAMBIO (from the Spanish *cambier,* to change). A license granted to one to make over a bill of ex-

change to another beyond the seas. —*Reg. Orig.* 194.

ESCAPE (from the Fr. *échapper*). The *escaping* or getting out of lawful restraint; as when a man has been arrested or imprisoned and gets away before he is discharged by due course of law. An *escape* is either negligent or voluntary; negligent, where the party escapes without the consent of the sheriff or his officer; voluntary where the sheriff or his officer permits him to go at large. After a *voluntary* escape, if the party were in custody under a writ of execution, the sheriff can never retake him, and would be liable to an action for false imprisonment if he did. After a *negligent* escape the sheriff may in all cases retake the party, even on a Sunday, although he has been declared a bankrupt after his escape, and at the time of the retaking had the protection from arrest given him by the commissioners in pursuance of statute 6 Geo. 4, c. 16, s. 117.—1 *Arch. Pract.* 199; 3 *Bl.* 415.

ESCAPE WARRANT. A warrant granted to retake a prisoner who has escaped from custody. When any person committed to the custody of the Queen's Prison, either on a writ of execution or on mesne process, go at large, on affidavit made thereof before a judge of the court in which the action was brought, an *escape warrant* shall be granted, directed to all the sheriffs throughout England, commanding them to retake the prisoner, and to commit him to gaol where taken, there to remain until the debt be satisfied.—*Tomlins.*

ESCAPIUM. That which comes by hap, chance, or accident.—*Cart. Abbat. Glast.*

ESCHEAT (from the Fr. *échoir*, to devolve, to fall, &c.) To fall back, to revert, to devolve upon, &c. *Escheat* was one of the fruits and consequences of feodal tenure; "The word with us," says Blackstone, "denotes an obstruction of the course of descent, and a consequent determination of the tenure by some unforeseen contingency, in which case the land naturally results back, by a kind of reversion (or escheats) to the original grantor or lord of the fee" The word *escheat* is used also for the land or estate *itself*, which so reverts to the lord, as well as for the mere *act* of reverting. *Escheats* are frequently divided into those *propter defectum sanguinis*, and those *propter delictum tenentis*, the one sort being where the tenant dies without heirs, the other where his blood is attainted. Where a tenant in fee simple of any lands or tenements which he holds of another, dies seised without any heir general or special, the lord shall have a *writ of escheat* against him who is tenant of the lands after the death of his tenant, and shall recover the land, because he shall have the same in lieu of his services.—3 *Cru.* 453, 454.

ESCHEATOR (from the French *eschaetor*). The name of an officer who was appointed by the lord treasurer in every county to look after the *escheats* which fell due to the king in his particular county, and to certify them into the chancery or exchequer. They continued in office only one year, nor could any one be an *escheator* above once in three years.—*Reg. Orig.* 259; *Co. Lit.* 92 *b*, *s.* 130.

ESCHECCUM. A jury or inquisition.—*Cowel.*

ESCROW (from the Fr. *écrou*, a scroll). When a deed is not delivered absolutely but conditionally, i. e. not to the grantee himself, or to some person for him, but to a third

person, to keep it until something is done by the grantee, it is said to be delivered, not as a deed, but as an *escrow*, i. e. as a *scrowl* or writing, which is not to take effect till the condition is performed, when it becomes a good deed.—4 *Cruise*, 31.

ESCUAGE (from the Fr. *écu*, a shield or buckler). A pecuniary satisfaction given by those who held their land by knight service to their lord, in consideration of his dispensing with their personal attendance in the wars; for this personal attendance in knight service grew very troublesome and inconvenient, and hence it was that those who held by that tenure endeavoured to compound for it. This they did at first by sending others in their stead, but afterwards they made a pecuniary satisfaction, which ultimately was levied by regular assessments, at so much for every knight's fee, and acquired the above name of *escuage*; it was also called *scutage* or *servitium scuti*. —1 *Cruise*, 27; 1 *Mad. Exch.* 321. See also *Knight Service*.

ESKECTORES (from the French *escher*). Robbers, or destroyers of other men's lands and fortunes.—*Cowel*.

ESLISORS. See *Elisors*.

ESNECY (*asnesia*). The privilege or prerogative given to the eldest among coparceners, to have the first choice after the inheritance is divided. —*Fleta, lib. 5, c. 10*.

ESPLEES (*expletiæ*). The full profits that ground or land yields; as the hay of meadows, the feed of the pasture, the corn of the arable, and the rents, services, and such like issues. It sometimes signifies the farm or lands themselves.—*Du Cange*.

ESSENDI QUIETUM DE TOLONIS. A writ that lay for citizens and burgesses of any city or town which had a charter or prescription to exempt them from toll throughout the kingdom, and yet the same had been exacted of them.—*F. N. B.* 226.

ESSE. See *In Esse*.

ESSOIN or ESSOIGNE. An excuse for not appearing in court in pursuance of the summons contained in a writ. The causes of excuse called essoin were many. The principal one was *de infirmitate*, and this was of two kinds: one *de infirmitate veniendi*; the other *de infirmitate reseantisæ*; of which the first was afterwards called *de malo veniendi*. —1 *Reeves's Eng. Law*, 115; 3 *Bl.* 278.

ESSOIN DAY OF THE TERM. Formerly the first *general return day* of the term was called the *essoin day*, because that was the day on which the court sat to receive *essoins* or excuses for those who did not appear in court according to the summons contained in the writ; but the person summoned had three days' grace beyond the day named in the writ in which to make his appearance, and if he appeared on the fourth day inclusive, *quarto die post*, it was sufficient; but when *essoins* were no longer allowed to be cast in personal actions, the court discontinued sitting on that day. Still such *essoin-day* was until the 11 Geo. 4 & 1 Will. 4, c. 70, s. 6, for many purposes considered as the first day of the term. The *essoin-day* is, however, now done away with for all purposes as part of the term,—3 *Bl.* 278; 1 *Arch. Pract.* 97.

ESSONIATOR. He who cast an essoin, or alleged an excuse for not appearing in court according to the exigency of the writ, was so termed. See tit. *Casting an Essoin*.

ESTABLISHMENT OF DOWER. The assurance or settlement of dower made to the wife by the husband before or at marriage; in the same sense as the *assignment* of dower is the setting it apart by the heir after the death of the husband.—*Britton*, 102, 103.

ESTATE (Fr. *estat*). This word as used by law writers has a much more comprehensive signification than it has in common parlance. When a person speaks of his *estate* in ordinary language, we understand simply a certain portion of land, a certain mansion, or a certain number of houses, to which he applies this term; but in law phraseology we understand by the word *estate* not merely the *corporeal substance* of lands and tenements, but the *interest* which one has in them. Preston defines the word *estate* to be "the *interest* which any one has in lands, or in any other subject of property; and this is how the word is generally understood by law writers. This word is called in Latin *status;* it signifying the condition or circumstance in which the owner stands with regard to his property. The word *estate* then is a *general* term, being applied to every species of property which a man may have an interest in; but when the law wishes to particularise the *kind* of property of which an estate consists, it adds to the word *estate* some adjunct or additional expression. Thus, when the property of which the estate consists is of a personal nature, i. e. when it consists of goods and chattels, and other moveable articles which may attend the *person* of the owner, it is denominated *personal estate;* and, on the other hand, when the property of which an *estate* consists is of a real or permanent nature, i. e. when it consists of lands, tenements, and other inheritable property which cannot be moved here and there, but is fixed and permanent, it is denominated *real estate.* Again, when the law wishes to particularise the value, importance, or extent of an estate in lands, &c. or in other words, wishes to show what *quantity of interest* the owner has in his lands, &c., it also adds to the word *estate* some qualifying adjunct or additional expression; as an estate *in fee*, an estate *tail*, an estate *for life*, an estate *for years*, &c. Thus, if A. grant B. a lease of certain premises for twenty-one years, the *interest* which B. acquires in these premises is his *estate*, and the particular kind of interest which he so acquires is termed an *estate for years.* This word being one of the most important in the lawyer's vocabulary, it is particularly desirable that the reader should arrive at a clear and definite idea of its import. The word then in its most comprehensive sense signifies the *interest* which a person has in any subject of property whatever; so that the idea which the word *estate* gives rise to in the lawyer's mind is of an *immaterial*, not of a *material* nature; it conveys to his mind the idea of an *interest* in property, and not the substantial property itself, which is only the object of that interest. This distinction is of the utmost importance, and is absolutely necessary to be kept in view in order to understand the nature of the different estates as they are treated of by our law writers. The first division of the subject arises out of the distinction which our law makes between property of a transitory or moveable nature, and property of a stationary or immoveable nature; or, in other words, between goods and chattels, and between lands and tenements. The former species of property, on account of its mobility and its capacity of being carried away with the *person* of the owner whithersoever he pleases to remove it, is thence denominated *personal* property; while the latter species of

property, on account of its immobility and incapacity of being moved, being regarded by the law as possessing a more real and substantial character, is thence denominated *real* property. The *interest*, then, which a person has in such personal property is denominated *personal estate*, while the *interest* which a person has in real property is denominated *real estate*. We shall now dismiss the word *estate* as used in reference to personal property, and consider it only with reference to real property, with which the word is more commonly associated. An estate in lands and tenements may be considered, 1. In reference to the nature of the ownership. 2. In reference to the *quantity of interest* of which the estate is composed. These appear to be the most natural divisions, and those which more particularly demand consideration. 1. Then with regard to the nature of the ownership. There are two species of ownerships in this country, viz. the *legal* and the *equitable*; that is, there may be two owners of the same land, each having an estate in the land at the same time, though by different titles: the one acquiring his title by operation of *law*, the other by operation of *equity*; and thence the one is said to have the *legal estate*, the other the *equitable estate*. Thus a person to whom lands are conveyed (i. e. a *trustee*) to hold them in trust for another, is regarded as the owner of those lands in the eye of the law; but he for whose use or benefit they are held (i. e. the *cestui que trust*) is regarded as the owner in the eye of equity. In this instance the trustee is said to have the *legal estate*, and the *cestui que trust* the *equitable estate*. From what has been said with reference to the division of ownership, it is not to be understood that the ownership in lands always assumes this two-fold character; on the contrary, the legal and the equitable ownerships are generally united in the same person, viz. in the absolute owner of the lands; this division, however, frequently exists, being created to answer particular purposes, and is discussed here, in order to explain to the reader the meaning of the words *legal* and *equitable*, as applied to the word *estate*. It is hardly to be expected that the reader will fully understand this subject unless previously acquainted with the history of uses and trusts, and, therefore, we will not enlarge upon it, but will proceed to the second division of the subject, viz. 2. In reference to the *quantity of interest*. The *quantity* of interest which a person has in lands is measured by its duration, or, in other words, by the length of time for which it is to endure. When it is said that a man has an estate in lands, nothing further can be understood than that he has an interest in lands, but what quantity of interest he has in them, or in other words, for what period his interest in them is to endure, is unknown, and cannot be determined without associating with the word *estate* some adjunct or additional expression adapted to point out or limit the time for which it is to be enjoyed. Thus a person who has an unlimited interest in lands, that is, one who, in ordinary language, would be called the absolute owner of lands, is said to have an estate in *fee simple*. He who has an interest in lands, &c. which is not absolute and unlimited, but is confined within certain limits, and is subject to certain restrictions, is said to have an estate *tail*. So when an interest in lands, &c. is to endure only for life, it is termed an estate *for life*; when it is to endure for a certain number of years, it is termed an estate *for years*; when during the will of the parties, an estate *at will*, and so on; the quantity of interest, or the duration of the estate, always being ascertained and pointed out by corresponding words. By way of reca-

pitulation, the word *estate* signifies the *interest* which a person has in any subject of property whatever; when the property is of a personal nature, the interest therein is denominated *personal estate;* when of a real nature, *real estate.* Real estate may be considered with reference to the ownership therein, which sometimes assumes a twofold character, the one deriving its effect from law, the other from equity; and thence respectively denominated the *legal* and the *equitable* estate. Lastly, it may be considered with reference to the quantum or duration of the interest of which it is composed, which is expressed by various appropriate adjuncts being associated with the word *estate,* significant of such quantum or duration. It may be as well to observe that although the word *estate* in its most comprehensive and in its most ordinary legal signification, signifies an interest in property, yet for the purposes of local description, it is frequently used in its more familiar acceptation to signify the substance of lands and tenements, &c.—See *Preston on Estates;* 1 *Cruise,* 55.

ESTOP, *To.* See tit. *Estoppel.*

ESTOPPEL (from the Fr. *étouper,* to stop.) A man is sometimes precluded in law from alleging or denying a fact, in consequence of his own previous act, allegation, or denial to the contrary; and this preclusion is called an *estoppel.* It may arise either from matter of *record,* from the *deed* of the party, or from matter in *pais,* i. e. matter of *fact.* Thus any allegation of fact, or any admission made in pleading, will preclude the party from afterwards contesting the truth of the matter so alleged or admitted, upon the trial of the issue in which such pleading terminates; and this is called an *estoppel* by matter of record. As an instance of an estoppel by *deed,* may be mentioned the case of a bond reciting a certain fact; the party executing that bond will be precluded from afterwards denying in any action brought upon that instrument the fact so recited. An example of an *estoppel* by matter in *pais* occurs when one man has accepted rent of another, in which case he will be *estopped* from afterwards denying in any action with that person, that he was at the time of such acceptance his tenant.—*Stephen on Pleading,* 222. See also tit. *Matter of Record.*

ESTOPPEL BY RECORD. See tit. *Estoppel.*

ESTOPPEL IN PAIS. See tit. *Estoppel.*

ESTOVERS (from the Fr. *étoffer,* to furnish, &c.) Necessaries or sustenance; although as used by our law writers it seems to signify more particularly *wood.* Thus common of *estovers* is a liberty of taking wood for the use or furniture of a house or farm from off another's estate.—2 *Bl.* 35. This word also sometimes signifies that allowance which in case of a divorce *a mensa et thoro* is made to a woman for her support and maintenance out of her husband's estate. —1 *Bl.* 441.

ESTOVERIIS HABENDIS, *Writ de.* A writ which lies for a woman who has been divorced *a mensa et thoro,* to recover her *estovers* from her former husband.—1 *Bl.* 442. See title *Estovers.*

ESTRAYS (from the Fr. *estrayeur*). Such valuable animals of a tame nature as are found wandering or *straying* in any manor or lordship, and no man knows the owner of them; in which case the law gives them to the

king, as the general owner and lord paramount of the soil, in recompense for the damage which they have done therein; they, however, most usually belong to the lord of the manor, by special grant from the crown.—*Bac. Abr.*; 1 *Bl.* 297.

ESTREAT (*extractum*). The true copy, note, or duplicate of an original writing; as of amerciaments or fines set down in the rolls of a court, to be levied by the bailiff or other officer of every man according to his offence.—*F. N. B.* 57, 76. The office of clerk of the *estreats* was abolished by 7 Will. 4 & 1 Vict. c. 30.—1 *Arch. Pract.* 21.

ESTREATED. Is commonly used in reference to recognizances, which when forfeited are said to be *estreated*, apparently from the Book of Estreats, in which they are set down. See tit. *Estreat.*

ESTREPE (from the Fr. *estropier*, to mutilate). The damaging of lands or woods by a tenant for life, to the prejudice of him in reversion.—*Cowel.*

ESTREPEMENT or ESTREPAMENT. The offence of *estreping.*—See tit. *Estrepe.*

ESTREPEMENT, *Writ of.* A writ which lay against a tenant for life who had committed damage or injury to the lands or woods of his reversioner. See tit. *Estrepe.*

ET HOC PARATUS EST VERIFICARE (*and this he is ready to verify*). Words used at the conclusion of common law pleadings which contain new affirmative matter, expressing the willingness of the party so pleading to establish by proof the matter he has alleged in his plea. When a pleading so concludes, it is technically said to "*conclude with a verification,*" in contradistinction to a pleading which simply denies matter alleged by the opposite party, and which is said to "*conclude to the country,*" the conclusion of such a plea simply being "and of this the defendant puts himself upon the country."

EVENINGS. The delivery at *even* or night of a certain portion of grass or corn or underwood to a customary tenant who performed his usual service of cutting, mowing, or reaping for his lord, as a gratuity or encouragement for the performance of his bounden service.—*Cowel.*

EVIDENCE (*evidentia*). It would be foreign to the design of this work to enter into the various distinctions as to what is, and what is not, legal *evidence* to a jury; the object here is to convey to the reader a clear idea of the word *evidence.* In its general sense, then, *evidence* may be said to signify any matter which is brought forward for the purpose of ascertaining the truth of any particular fact, or of any point in issue. It is called evidence because thereby the point in issue is to be made *evident*; for *probationes debent esse* evidentes *et perspicuæ.*—3 *Bl.* 367.

EWAGE (from the Fr. *eau*, water). A toll paid for water-passage. The same as *aquage.*—*Cowel.*

EWBRICE. Adultery; from the Sax. *ewe*, i. e. marriage, and *bryce*, i. e. to break.—*Cowel.*

EWE. A law. It is mentioned in the laws of William I.—*Cowel.*

EX CONTRACTU, *Actions.* See tit. *Contractu.*

EX DELICTO, *Actions.* See tit. *Delicto.*

EXACTOR REGIS. The king's exactor. It is sometimes understood for a sheriff.—*Black Book in the Exchcq.*

EXAMINANT. A party who undergoes, or has to submit to an examination, is sometimes so called.

EXAMINATION *in Chancery.* See tit. *Suit in Equity.*

EXAMINERS *in Chancery.* See tit. *Suit in Equity.*

EXANNUAL ROLL. A roll wherein (in the old way of exhibiting the sheriff's accounts) the illeviable fines and desperate debts were transcribed; and which *roll* was to be *annually* read to the sheriff, upon his account, to see what might be gotten.—*Cowel.*

EXCEPT, *To.* See tit. *Exception.*

EXCEPTION. This word seems to have much the same meaning as the word "objection." Thus a plaintiff is said to *except* to the bail put in by a defendant, when he objects to their sufficiency on the ground of their not being sufficiently responsible persons, or upon any other ground. So, when a plaintiff in a suit in equity objects to the sufficiency of the defendant's answer, he is said to *except* to the same for insufficiency; and when he formally draws up, or sets forth such parts of the bill as he conceives to be unanswered, and prays that the defendant may put in a full answer thereto, such formal statements are termed the *exceptions* to the defendant's answer.—*Goldsmith's Eq.* 190; *Smith's Ch. Pr.*

EXCEPTION, *Day of.* Formerly when essoins were allowed in personal actions, if a defendant did not appear, or cast an essoin on the first general return day of the term (which was called the essoin day) the plaintiff on the next day might have entered an exception, and obtained a *ne recipiatur*, to prevent the defendant's essoin from being received. From this exception so taken and entered, the second day after the return of the writ was called the *day of exception.*—1 *Arch. Pract.* 98; *Tomlins.*

EXCEPTION *in Chancery.* See tit. *Exception.*

EXCEPTION *in Deeds.* An exception in a deed is a clause in the premises of a deed, whereby the grantor excepts something out of that which he has before granted, by which means it does not pass by the grant, and is severed from the things granted; as where the subject of the grant is a house, a particular room in such house might be *excepted* out of the same, &c.—4 *Cruise*, 289.

EXCEPTION *to Evidence.* See *Bill of Exceptions.*

EXCHANGE OF LANDS. An exchange of lands is a mutual grant of equal interest, the one in consideration of the other. As if there be two men, and each of them is seised of the same quantity of land in the same county, and they mutually grant their land to each other in *exchange.*—4 *Cruise*, 80.

EXCHEQUER (from the Fr. *exchequier*). The Court of Exchequer is a very ancient court of record, and was established by William the Conqueror as a part of the *aula regis*, though regulated and reduced to its present order by King Edward the First; and was intended principally to order the revenues of the crown, and to recover the king's debts and duties. Camden says that this court took its name from the table at which the judges sat, which was covered with a *chequered* cloth, resembling a

chess-board, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. This court was formerly divided into a court of equity and court of common law. The court of equity was held in a place called the *Exchequer Chamber*, usually before the Lord Chief Baron, who by 57 *Geo.* 3, *c.* 18, was empowered to hear and determine alone all causes, matters and things at any time depending in the Court of *Exchequer as a court of equity*. Since the uniformity of process act, 2 Wm. 4, c. 39, the *general* business transacted on the common law side of the *Exchequer* is much the same as that which is transacted in the other courts of common law.—3 *Bl.* 44; 1 *Arch. Pract.* 510; *Camden, Brit.* 113.

EXCHEQUER CHAMBER. The court in which the equity business of the Court of Exchequer was formerly transacted was so called; but since the abolition of the equity side of the Court of Exchequer, it is the name given to the court of appellate jurisdiction, before which proceedings on writs of error are heard and determined.

EXCHEQUER OF PLEAS. See tit. *Exchequer.*

EXCHEQUER, *Court of.* See tit. *Exchequer.*

EXCISE (from the Belg. *acciise*, tribute). The excise duty is a tax or impost charged by government sometimes upon the consumption of a commodity, and sometimes upon the retail sale of it.—1 *Bl.* 318.

EXCLUSAGIUM. A payment due to the lord for the benefit of having a sluice.—*Cowel.*

EXCOMMENGEMENT. A law French word, and in the 23 Hen. 8, c. 3, signifies *excommunication.*—*Cowel.*

EXCOMMUNICATO CAPIENDO. A writ which issued to the sheriff of the county, commanding him to take an *excommunicated* person, and imprison him in the county gaol, because within forty days after the sentence had been published in the church the offender would not submit and abide by the sentence of the spiritual court. And he remained in prison until he was reconciled to the church, and such reconciliation certified by the bishop; under which another writ, *de excommunicato deliberando*, issued out of Chancery to deliver and release him; but when such person would not become reconciled, but still remained obstinate in resisting the sentence of the spiritual court, and afterwards had been unlawfully delivered from prison before having given caution to obey the authority of the church, then a writ *excommunicato recipiendo* is issued, commanding the sheriff to seek after the offender and imprison him again. —*Reg. Orig.* 67; *F. N. B.* 62; 3 *Bl.* 102.

EXECUTE, *To.* To perform, carry out, carry into force, complete. Thus a man is said to *execute* a deed, when he signs, seals, and delivers it; thereby rendering the instrument so far complete as to give force and operation to its contents. So a sheriff is said to *execute* a writ, when he performs or carries out the command of the court therein contained, and the writ itself is then said to be *executed*; that is, its terms have been obeyed, or performed, or carried into force by the sheriff. See also tit. *Executed and Executory.*

EXECUTED and EXECUTORY. *Executed* signifies performed, done, completed, *now* in existence, *now* in possession, &c. *Executory* signifies

that which is *not yet* performed, completed, done, or now in existence, but which, according to all moral probability, *will be* at some future time. Thus a contract is said to be either *executed* or *executory*; as if A. agrees to change horses with B., and they do it *immediately*, in this case the possession and the right are transferred together, and the contract is said to be *executed*, i. e. performed and completed: on the other hand, supposing they agree to change next week; here the *right* only vests, and their reciprocal property in each other's horse is *not yet in possession*, and this then is a contract *executory*, i. e. not yet completed, but in contemplation of being so; hence it is, that a contract *executed*, is said to convey a *chose in possession*, i. e. the possession of the thing; and a contract *executory*, only a *chose in action*, i. e. a thing for which a person may bring his action. The words *executed* and *executory*, as applied to estates, bear much the same meaning; thus an *estate executed* signifies an estate *now in possession*, whereby a present interest passes to and resides in the tenant, *not depending on any subsequent circumstance or contingency*, which would be the case if it were an estate *executory*. So also an *executed fine* (of which nature was the fine sur cognizance de droit come ceo, &c.) signified such a fine as conveyed nothing but an absolute estate, and gave the cognizee *at once* a seisin in law, without livery or any other ceremony *to be* performed. An *executed remainder* signifies a *vested* remainder, as where the estate is invariably fixed, to remain to a determinate person, after the particular estate is spent, and which nothing can defeat or set aside; whereas an *executory* or contingent remainder is limited to take effect either to a dubious and uncertain *person*, or upon a dubious and uncertain event; so that the particular estate may happen to be determined without the remainder ever taking effect. An *executory devise* is such a disposition of lands by will, that thereby *no estate vests* at the death of the devisor, but depends on some future contingency. From the above numerous examples it is hoped that the reader will be able to form something like an accurate idea of the words *executed* and *executory*; and he will bear always in mind that the *one* implies something already done, performed, or completed, or something which is *now* in possession or existence; and that the *other* implies something not yet completed or performed, something not yet in possession or existence, but which may or may not be so at some future time, according to circumstances.

EXECUTION (*executio*). The act of putting the sentence of the law into force, or, in other words, of carrying it into *execution*. This takes place after the jury have delivered their verdict, and is performed in different manners, according to the nature of the action upon which it is founded, and of the judgment which has been recovered. It is usually performed by issuing a *writ of execution*, according to the nature of the case, directed to the sheriff of the county wherein the defendant resides, commanding him to carry into execution the sentence of the law, according to the tenor of the writ.—3 *Bl.* 412. See also tit. *Execute*.

EXECUTIONE FACIENDA. A writ commanding *execution* of a judgment. —*Reg. Orig.*

EXECUTIONE FACIENDA IN WITHERNAMIUM. A writ that lies for *taking in execution* the cattle of a man who had previously conveyed out of the county the cattle of another, so that the sheriff who had authority to replevy them, was unable to execute his charge.—*Reg. Orig.* 82; *Cowel.*

EXECUTIONE JUDICII. A writ directed to the judges of an inferior court after a writ of error has been brought to reverse the judgment thereof, commanding them to proceed on the judgment, notwithstanding the writ of error.—1 *Arch. Pract.* 544.

EXECUTOR. An *executor* is a person appointed by another in his last will and testament, to perform or *execute* the commands and directions contained therein after his decease. If the person whom the testator so appoints is a female, she is termed an *executrix;* and if a stranger takes upon himself to act as executor, without any just authority, he is called in law an executor *de son tort* (i. e. of his own wrong), and is liable to all the trouble of an executorship without any of the profits or the advantages.—2 *Bl.* 503; *Toller*, 37.

EXECUTOR DE SON TORT. See tit. *Executor.*

EXECUTORY ESTATE. See tit. *Executed and Executory.*

EXECUTORY DEVISE. See tit. *Executed and Executory.*

EXECUTRIX. See tit. *Executor.*

EXEMPLIFICATION. In law a copy or transcript: thus an *exemplification of a recovery*, signifies a copy or transcript of the recovery roll; an *exemplification of letters patent*, a copy or transcript of letters patent made from the original enrolment.—2 *Bl.* 534; 1 *Arch. Pract.* 365.

EXEMPLIFICATIONE. A writ granted for the exemplification of an original writing or record.—*Reg. Orig.* 290.

EXERCITUALE. This word was formerly used to signify a heriot.—*Leg. Edw. Conf.*

EXFREDIARE (from *ex* and the Sax. *frede, peace*). To break the peace, by committing open violence or otherwise.—*Leg. Hen.* 1, *c.* 31.

EX GRAVI QUERELA. A writ that formerly lay for a person to whom any lands or tenements in fee within a city, town or borough were devised by will, and the heir of the devisor entered and detained them from him.—*F. N. B.* 198; *Cowel.*

EXHIBIT, *An.* A term frequently employed to designate any particular document which, in the course of a cause, is *exhibited* or produced by either of the litigant parties. For the purposes of convenience such documents, when numerous, are usually marked with some letter of the alphabet, and are then referred to as "exhibit A" or "exhibit B," &c.

EXHIBITION. A term in the Scotch law, applied to an action for compelling the production of writings, &c.—*Tomlins.*

EXIGENDARIES. See tit. *Exigenter.*

EXIGENT or EXIGI FACIAS. A writ which is made use of in the process of outlawry. The writ of *exigi facias* and process of outlawry as now used are founded on the statute of 2 Wm. 4, c. 39. It is a judicial writ commanding the sheriff to demand the defendant from county court to county court until he be outlawed, or if he appear then, to take and have him before the court on a day certain in term to answer to the plaintiff's action; but if he does not appear, and is returned *quinto exactus*, he shall then be outlawed by the coroners of the county. It is called *exigent* because it *exacts* or requires the party

to appear to answer the law. When the writ of *exigent* is used as a writ of execution, that is, after judgment has been given against the party, then it may issue after the return of one *capias*; but when before judgment, then it must not be issued until the return of a *capias*, an *alias*, and a *pluries*. The writ of *exigent* lies also in an indictment for felony where the party indicted cannot be found.—3 *Bl.* 284; 4 *Inst.* 177.

EXIGENTER. An officer of the Court of Common Pleas, whose duty it was to make out the exigents and proclamations in the process of outlawry. This office was abolished by 7 Wm. 4 & 1 Vict. cap. 30.—*Cowel*; 1 *Arch. Pract.* 21.

EXIGI FACIAS. See tit. *Exigent.*

EXILIUM. Waste, destruction, spoiling, &c. and as used in the statute of Marlbridge, Hen. 3, c. 25, it seems to signify the injury done to an estate in respect of the tenants, by altering their tenure or condition, by ejecting, advancing, remitting, &c. and in this sense also Fleta uses it.—*Cowel*; *Fleta.*

EXITUS. Issue, child or children, offspring. The word is also used for the rents or profits of lands or tenements.—*Cowel.*

EXLEGALITUS. One who is prosecuted as an outlaw.—*Cowel.*

EX MERO MOTU. Words which are formally used in the king's charters, &c. signifying that what is contained in the charter is granted *of his own free will* and motion, without the interposition of any other party.—*Kitchen*, 152.

EX OFFICIO. Officially, by virtue of office; thus a justice of the peace may not only grant surety of the peace when applied to for that purpose, but he may demand and take it *ex officio* (i. e. by virtue of his office) at discretion. So informations at the suit of the king filed by the Attorney General, *by virtue of his office*, without applying to the court wherein they are to be filed for leave so to do, or without giving the defendants any opportunity of showing cause why they should not be filed, are called *ex officio informations.*—*Cowel*; *Dalt.* 270.

EXONERATIONE SECTÆ. A writ that lay for the king's ward to be free and disburdened of all suit, &c. to the county, hundred, leet, or court baron, during the time of his wardship.—*F. N. B.* 158. So if a man have lands in divers places in the county, and he is constrained to come to the leet where he is not dwelling, when he resides within the precincts of any other leet, &c. he shall have this writ to the sheriff to discharge him from coming to any other court leet, than the one which is in the hundred where he dwells.—*New Nat. Brev.* 352. It also lay for persons who had been distrained for not coming to court leets, for the lands belonging to their churches; and for a woman holding land in dower if she had been distrained to do suit of court for such land when the heir had lands sufficient in the same county.—*F. N. B.* 394.

EXONERETUR. When a defendant is rendered to prison in discharge of his bail, the entry which is made on the bail piece signifying that the bail are *exonerated* is termed an exoneretur.—1 *Arch.* 250.

EXPARTE. Of the one part, partly. Thus an *exparte* statement is a statement made by one party only; an *exparte* application to the court, is an application made by one party only; an *exparte* commission in

chancery, is a commission taken out and executed by one side or party only.—*Cowel.*

EXPARTE TALIS. This is a writ that lies for a bailiff or receiver, who having auditors assigned to hear his account, cannot obtain of them reasonable allowance, but is cast into prison by them.—*Les Termes de la Ley.*

EXPECTANCY, *Estates in.* Estates whereof the owner has not the *present* possession or right of enjoyment, but of which he *expects* to have the future possession and enjoyment. Such are estates in remainder and reversion.—2 *Bl.* 163; 2 *Cruise*, 237. See also tit. *Expectant.*

EXPECTANT. Awaiting, or looking forward to a given event. Thus if A. convey land to B. for life, with remainder to C. in fee, the estate or interest which C. would thus acquire in the land would be said to be *expectant* upon the determination of B.'s estate for life; and the estate or interest itself which C. would acquire under such a conveyance would be called an "estate in expectancy." See also tit. *Expectancy.*

EXPEDITATE (*expeditare*). In the forest laws signifies to cut out the ball of dogs' fore feet, for the preservation of the king's game; and every one who kept any great dog not expeditated forfeited three shillings and fourpence to the king.—*Cowel.*

EXPENDITORS. Officers appointed by the commissioners of sewers to *expend* or disburse the money arising from the sewers' rate, when the same has been received by them from the collectors, towards payment of the repairs and amendments ordered by the commissioners to be done.—37 *Hen.* 8, *c.* 11; *Cowel.*

EXPENSÆ LITIS. The *expenses*, or, as they are usually called, the *costs of a suit*, which are allowed to the successful party in an action.

EXPENSIS MILITUM LEVANDIS. A writ directed to the sheriff for *levying the allowance* for *knights* of the parliament.—*Reg. Orig.* 191.

EXPENSIS MILITUM NON LEVANDIS, &c. A writ prohibiting the sheriff from levying any allowance for the knights of the shire upon those who hold in ancient demesne.—*Reg. Orig.* 261.

EXPLEES. See tit. *Esplees.*

EX POST FACTO. From an after-act; after a deed is done. Thus an act done, or an estate granted, may be made good by matter *ex post facto*, though it was not so before. *Ex post facto laws* are such as are made to operate upon *facts* committed previously to the making of such laws, and may therefore be said to be retrospective in their operations; such for example as the revenue acts, which impose duties upon goods from a certain day named in the act, and previously to its passing.—8 *Rep.* 146.

EXPRESS COLOUR. See tit. *Colour.*

EXTEND (*extendere*). Upon some prosecutions given by statute, as in the case of recognizances, or debts acknowledged on statutes merchant, or statutes staple, pursuant to the statutes 13 Edw. 1, *de mercatoribus*, and 27 Edw. 3, c. 9; upon forfeiture of these, the defaulter's body, lands and goods may all be taken at once in execution to compel the payment of the debt; the writ of execution in this case is usually called an *extent* or *extendi facias*, because the sheriff is to cause the lands, &c. to be valued or appraised to their full *extended*

value, before he delivers them to the plaintiff, in order that it may be certainly known how soon the debt will be satisfied, and this is called *extending* the lands.—3 *Bl.* 420.

EXTENDI FACIAS. See tit. *Extend.*

EXTENT. A writ issued out of the Court of Exchequer to recover debts due directly or indirectly to the crown. It is either "in chief" or "in aid;" "immediate," or founded on previous proceedings by *scire facias* or otherwise. It is "in chief" when issued to recover debts due directly to the crown, and is either in the first or second degree: viz. in the first when issued against the crown debtor himself, and in the second when issued against a debtor of the crown debtor, whom the prerogative entitles the crown to sue for a debt of its own. It is "in aid" when issued by a crown debtor for the recovery of his debt, or by a surety of a principal debtor of the crown, who has paid the debt, against such principal. It is "immediate" when issued, in the first instance, on an affidavit of danger, that the debt is likely to be lost. By virtue of the prerogative the extent takes precedence of all executions at the suit of subjects, if tested before the day of delivering such execution to the sheriff.—*Bagl. Pr.* 587.

EXTENT IN AID. See tit. *Extent.*

EXTENT IN CHIEF. See tit. *Extent.*

EXTINGUISHMENT. The putting an end to, extinguishing, or making extinct.

Extinguishment of Common is effected by purchasing lands in which a person has a *common* appendant; or by a commoner releasing his common in one acre, which is an extinguishment of the whole common.

Extinguishment of Copyhold. When a copyholder commits any act which denotes his intention to hold no longer of his lord, and which amounts to a determination of his will.

Extinguishment of Debt. Where a *feme sole* who is a creditor takes the debtor to husband; or where there are two *joint* obligors in a bond, and the obligee marries one of them; or where a person is bound to a *feme sole* and another, and she takes the obligor to husband, in all these cases the debts will be *extinguished.*

Extinguishment of Estates. If my tenant for life makes a lease to A. for life, remainder to B. and his heirs, and I release to A., this *extinguishes* my right to the reversion, and shall enure to the advantage of B.'s remainder, as well as of A.'s particular estate.

Extinguishment of Services. When the lord purchases or accepts parcels of the tenancy, out of which an entire service is to be paid or done; excepting when the service is *pro bono publico*, in which case no part is extinguished.—*Les Termes de la Ley;* 2 *Bl.* 325; *Co. Lit.*

EXTIRPATIONE. A judicial writ that lay against him who after a verdict found against him for land, &c. maliciously overthrows any house or trees upon it to the great damage thereof; it lay both after and before judgment.—*Reg. Jud.* 13, 56, 58.

EXTRA COSTS. Such costs as the peculiar circumstances of the case have rendered it necessary to incur, but which do not necessarily arise out of the ordinary proceedings of the suit: such as the tavern expenses of witnesses who have been subpœnaed to attend the trial, money paid to them for their loss of time, consultation fees to counsel, court fees, and a variety of others. And as the mas-

ters of the courts in taxing the parties' costs do so upon a view of the proceedings, they require that all extra expenses or costs incurred, which do not appear upon the face of the proceedings, such as those above instanced, should be verified by affidavit, and which affidavit is thence termed an *affidavit of increase.* —2 *Arch.* 1163; *Bagley*, 205.

EXTRA JUDICIAL. Any act done by a judge *beyond* his proper and legitimate authority is an *extra judicial* act; or any thing which he may do which is not regular in the proceedings of a court is termed *extra judicial.*

EXTRA PAROCHIAL. Out of the bounds or limits of a parish; which many places are, and are thence exempt from the duties of a parish.—1 *Bl.* 114.

EXTRA VIAM. See tit. *New Assignment.*

EXTRACTA CURIÆ. The customary dues, fees, and amercements of a court, or the profits of holding the same.—*Ken. Paroch. Antiq.* 572.

EXUPERARE. To overcome, to apprehend, or to take.—*Leg. Edm. cap.* 2.

EYRE. See tit. *Eire.*

F.

FABRIC LANDS. Lands given towards the support, maintenance, rebuilding, or repairing of cathedrals and churches; mentioned in the act of oblivion, 12 *Car.* 2, *c.* 8.—*Cowel.*

FACTOR and BROKER. An agent employed for commercial purposes is either a factor or a broker. A factor is employed either by a foreign or home merchant, or other person, and is entrusted with the possession and apparent ownership of the goods to be sold by him for his principal. A *broker* has not the custody of the goods of his principal; he is merely empowered to effect the contract of sale or purchase, in consideration of a commission or reward called brokerage, and when he has done this he is *functus officio*—2 *Camp.* 343. There are two kinds of factors, viz. *home* and *foreign* factors. In England a man is called a *home factor* when both he and his principal reside in this country; whilst a *foreign factor* is said to be one who, whether residing in England or abroad, is commissioned by a principal belonging to a different state or country from that in which the factor himself resides. The chief points of difference between a factor and a broker are, that a factor may buy and sell either in his own name or in that of his principal; a broker must in general contract in the name of the latter. A factor has the possession, management, and control of all goods which he buys or sells for his principal; a broker, on the contrary, is not entrusted with the possession of what he is employed to sell, nor is he empowered to obtain possession of what he is empowered to purchase; but he acts merely as a middle man or negociator between the parties.—*Story on Agency, as cited in Russ. on Fact. Ch. on Cont.* 210; 2 *B. & Ald.* 137.

FACULTY (*facultas*). A privilege or special dispensation granted to a man by favour and indulgence, permitting him to do that which by the law he could not do; as to marry without banns being first published; to hold two or more ecclesiastical livings at the same time; and the like.—25 *Hen.* 8, *c.* 21; *Les Termes de la Ley.*

FAIDA. Malice or deadly feud.—*Leg. Hen.* 1. *cap.* 88.

FAILURE OF RECORD. When a defendant in an action pleads any matter of record, and avers to prove it by record, and the plaintiff says there is no such record, then the defendant has a day given him to bring in the record, and if he fails to do so, or brings in such a one as is no bar to the action, he is then said to *fail of his record.*—*Les Termes de la Ley.*

FAINT ACTION or FEIGNED ACTION. An action brought by a party wherein he has no real title by law to recover what he seeks, although the words of the writ may be true enough; it is also understood for an action where the words of the writ are false.—*Lit.* 154.

FAINT-PLEADER or FAINT PLEADING. A false, covinous, or collusory manner of pleading, tending to deceive a third party.—*Les Termes de la Ley.*

FAIR PLEADER. See tit. *Beaupleader.*

FAIT. See tit. *Deed.*

FAIT ENROLLE. A *deed enrolled.*—1 *Keb.* 568.

FAITOURS. An antiquated French word, and as it is used in the stat. 7 *Rich.* 2, *c.* 5, signifies a bad doer, or a vagabond or idle person.—*Cowel.*

FALCATURA. A day's mowing or cutting of grass. *Falcare prata,* to cut or mow down grass in meadows laid in for hay, was a customary service due to the lord by his inferior tenants. *Falcatura una* was the duty of one time mowing; *Falcator* was the servile tenant who performed this labour; and *Falcuta* was the grass fresh mown and laid in swathes.—*Ken. Gloss.*

FALDAGE. (*faldagium*). A privilege which formerly several lords reserved to themselves of setting up folds for sheep in any fields within their manors, the better to manure them, and this not only with their own, but also with their tenant's sheep, which they called *secta faldæ.* This *faldage* in some places was termed fold-course or free-fold, and in some old charters fald-soca, i. e. the liberty of *foldage.*—*Les Termes de la Ley.*

FALDFEY or FALD-FEE. A composition paid by some customary tenants to the lord, to be free from *faldage.*—*Cowel.*

FALK-LAND or FOLK-LAND. See tit. *Folc-Land.*

FALMOTUM, FALCHEMOTE. See *Folkmote.*

FALSE ACTION. See tit. *Faint Action.*

FALSE CLAIM. In the laws of the forest signifies the claiming more than one's due. As the prior of Lancaster had by charter the tenth of all the venison, *viz. in carne tantum sed non in corio,* and because he made a *false claim,* and said that he ought to have the tenth of all venison within the forest of Lancaster as well *in carne* as *in corio;* he was *in misericordia de decima venationis suæ in corio non percipiendo.*—*Manwood's Forest Laws.*

FALSE IMPRISONMENT (*falsum imprisonamentum*). A trespass committed against a man by imprisoning him without lawful cause. To constitute the injury of false imprisonment there are two points requisite:—1. The detention of the person;

and 2. The unlawfulness of such detention. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority; and it may also arise by executing a lawful warrant or process at an unlawful time, as on Sunday, &c. —3 *Bl.* 127.

FALSE JUDGMENT, *Writ of.* A writ which lies to the courts at Westminster to rehear and review a cause which has been tried in some inferior court not of record, and whose judgment therein is supposed to be false or erroneous.—*Finch, L.* 484.

FALSE PLEA. See *Sham Plea.*

FALSE RETURN. See tit. *Return.*

FALSIFY. To falsify means to prove a thing to be false.—*Cowel.*

FALSING OF DOOMS. In the Scotch law signifies an appeal; *doom* meaning the sentence of the court; and *falsing of dooms*, the proving the injustice of that sentence.—*Tomlins.*

FALSONARIUS. A forger.—*Hoveden*, 424, *num.* 40.

FALSO RETORNO BREVIUM. The name of a writ which lies against a sheriff for false returns to writs, which he has had to execute.—*Reg. Jud.* 43.

FAMILIA. In a legal sense signifies a portion of land sufficient to maintain a family; sometimes called a *hide* of land, sometimes a *manse*; sometimes *carucata*, or a plough-land; containing as much as one plough and oxen could cultivate in a year.—*Cressy's Church Hist.* 723.

FARDEL OF LAND (*fardella terræ*). According to some authors, means the fourth part of a yard-land; others say that two *fardels of land* make a nook, and four nooks make a yard-land; thus making a *fardel of land* the eighth part of a yard-land—*Cowel.*

FARLEN or FARLEY. Supposed to be a composition paid to the lord on the death of a tenant in lieu of a heriot; a custom which seems to have prevailed in some of the western counties.—*Cowel.*

FARM or FERM. The author of *Les Termes de la Ley* says, *farm* or *ferm* is usually the chief messuage in a village or town, to which belongs great demesnes of all sorts, and was used to be let for term of life, years, or at will; and that they are called *farms* or *ferms* from the Saxon word *feormian*, which signifies to feed or yield victual; for, in ancient times, their reservations were as well in victuals as in money, until finally, in the time of King Henry the First, by agreement, the reservation of victuals was turned into ready money. The history which Blackstone gives of the word is much the same; *farm* or *feorme*, says he, is an old Saxon word signifying provision; and it came to be used instead of rent or render, because anciently the greater part of rents were reserved in provisions, in corn, in poultry, and the like, till the use of money became more frequent. So that a farmer, *firmarius*, was one who held his lands upon payment of a rent or *feorme*; though at present, by a gradual departure from the original sense, the word *farm* is brought to signify the very estate or lands so held upon farm or rent. The word, as used in the action of ejectment, signifies the leasehold interest in the premises, and does not mean a farm in its common acceptation.—2 *Ch. Bl.* 16, *n.* 3; *ib.* 317, 318.

FARM, *To.* To yield a return or rent. This appears to be the sense in which the word is used in leases—

"demise, grant, and *to farm* let," &c. See further, tit. *Farm.*

FASTERMANS (from the Sax. *fæst, i. e. firmus,* and *man, i. e. homo*). Signifies pledges.—*Leg. Edw. Confess. c.* 33.

FAUTORS. Favourers, supporters, or abettors.—*Cowel.*

FEAL. Faithful. Thus the tenants by knight service did swear to their lords to be *feal* and *leal, i. e.* to be faithful and loyal; and the oath taken upon such occasion was termed the oath of *fealty*; (*juramentum fidelitatis*), *i. e.* the oath of *faithfulness*, which implied that the tenant should do service faithfully, both at home and in the wars, to him from whom he received his lands; and in case of the breach of this condition and oath, by not performing the stipulated service, or by deserting the lord in battle, the lands were again to revert to him who granted them.—*Spelman*, 216; 2 *Bl.* 46.

FEAL and DIVOT. A right in Scotland of much the same nature as *common of turbary* in England.

FEALTY. See tit. *Feal.*

FEE (*feodum*). The original meaning of the word *fee* was an estate held of some superior on condition of rendering him service; and in which superior the ultimate property of the land resided; and Spelman's definition of the word is nearly the same. A feud or *fee*, says he, "is the right which the vassal or tenant hath in lands to use the same, and take the profits thereof to him and his heirs, rendering to the lord his due services for the same." We shall dwell no longer on the original meaning of the word, but shall proceed at once to ascertain its present signification; and in order to do so we shall use it in conjunction with those other words with which it is usually associated, and without which its full force and meaning cannot possibly be understood. Let us consider then the meaning of the phrase, *estate in fee simple*. The word *estate* (as associated with *real* property) would in this phrase, if unconnected with the other words, simply signify an interest in lands or hereditaments; but what the extent of that interest might be could not be known without some additional words; thus then the words *in fee simple* define the extent of that interest; an *estate in fee simple* signifying an absolute estate of inheritance in lands, the word *estate* signifying an interest in lands, the word *fee* signifying an inheritance, and the word *simple* signifying absolute, pure, unlimited; and thus the whole phrase signifies, as above mentioned, an *absolute inheritable interest* in lands, &c. See also tit. *Estate.*

FEE EXPECTANT. See tit. *Expectant.*

FEE FARM (*feuda firma*). Land held of another in *fee*, in consideration of such an annual rent as it is reasonably worth, (provided such annual rent be not less than the fourth part of its value), and without homage, fealty, or any other services than are actually specified in the deed of feoffment whereby the estate was created. And if the rent be behind and unpaid for the space of two years, then the feoffor, or his heir, has an action to recover the lands as his demesnes. The rent reserved on such an estate is thence called *fee farm rent.* Mr. Hargrave, in his note to Coke upon Littleton, seems to be of opinion that the *quantum* of the rent is not essential to create a *fee farm.* There were many *fee farm rents* belonging to the kings of England, being those which were originally reserved on their ancient demesnes;

but many of them were alienated from the crown in the reign of Charles the Second. — 2 *Bl.* 42; *Co. Litt.* 144, *n.* 5; *Britt. c.* 66, *num.* 4.

FEE-FARM RENT. See tit. *Fee Farm.*

FEE-FARM RENTS OF THE CROWN. See tit. *Fee Farm.*

FEE-SIMPLE. See tit. *Estate*, and also tit. *Fee.*

FEE-TAIL. See tit. *Estate*, and also tit. *Tail.*

FEIGNED ACTION. See tit. *Faint Action.*

FEIGNED ISSUE. A fictitious issue. The mode in which disputed questions of fact between the plaintiff and defendant in an action are prepared for trial by a jury, is by the operation of the pleadings or mutual allegations made by the plaintiff and defendant respectively, by which the real point in dispute is ultimately arrived at and admitted by both parties to be *the* point or issue to be submitted to the jury. In some instances, however, the decision of a disputed fact becomes necessary between other parties than the plaintiff and defendant in an action; and the point or fact in dispute being admitted by both parties to be the same, the machinery of an action and the instrumentality of pleadings become unnecessary for the purpose of raising the point or issue between the parties. In such cases recourse is frequently had to what is termed a *feigned* issue, wherein the plaintiff by a fiction declares that he laid a wager of 5*l.* with the defendant that certain goods, for instance, were his goods, and then proceeds to aver that they *were* his goods, and therefore demands the 5*l.* The defendant then admits the feigned wager, but avers that the goods were *not* the plaintiff's goods; and thereupon an *issue* is raised as to the plaintiff's property in the goods, which is then submitted to a jury in the usual way. The machinery of courts of equity not being calculated to try questions of disputed fact, it is not uncommon for them to direct such questions to be tried in a court of common law in the form of a feigned issue. Courts of law, also, under the powers given them by the interpleader acts, frequently direct such issues to be tried, for the purpose of trying the property or title to goods claimed by two or more persons. The recent act of 8 & 9 Vict. c. 109, s. 19, has however effected considerable alterations with regard to feigned issues; and in many instances in which they have hitherto been used, the old form of feigned issue may be considered by the above act to have been abolished.

FELAGUS (*quasi fide cum eo ligatus*). A friend who was bound in the *decennary* for the good behaviour of another. Thus in Legibus Inæ, cap. 15, it is said, "if the murderer could not be found, &c. the parents of the deceased should have six marks and the king forty; if he had no parents, then the lord should have it; *et si dominium non haberet* felagus *ejus.*" — *Cowel.*

FELE or FEAL HOMAGES. Faithful subjects; from the Saxon *fai*, i. e. faith. See tit. *Feal.*

FELO DE SE (*a felon of himself, a self-murderer.*) One who deliberately puts an end to his own existence, or commits any unlawful, malicious act, the consequence of which is, his own death; as if attempting to kill another man, he runs against his antagonist's sword, or shooting at another, the gun bursts and kills himself; and in order to constitute a person a *felo de se*, it is necessary that he be

of years of discretion, and in his senses at the time he committed the crime.—1 *Hawk. P. C.* 68; 4 *Bl.* 189. See also tit. *Homicide.*

FELONY (*felonia*). Such a crime as (from its heinousness) occasions a forfeiture of all the offender's lands and goods; and under the term *felony* is usually comprised all capital crimes below treason. The word *felony* in its general acceptation comprises every species of crime which occasioned at common law the forfeiture of lands and goods; and this usually happens in those crimes for which a capital punishment either is or was liable to be inflicted; for those felonies which were called clergyable, or to which the benefit of clergy extended, were anciently punished with death, in all lay or unlearned offenders; though since, by the statute law, that punishment was for the first offence universally remitted. All treasons, strictly speaking, are felonies, though, on the other hand, all felonies are not treason; and further it may be said, that not only all offences now capital are to some extent felony, but even some of those other offences which are not punished with death; as suicide, where the party is already dead; homicide by chance medley, or in self defence; and petit larceny or pilfering; for all these subject the committers of them to forfeitures. Thus *felony* may be said to be a *generic* term, comprehending the various individual *species* of crimes, the commission of any one of which occasions a total forfeiture of either lands or goods, or both at the common law; and to which capital, or other punishment, may be superadded according to the degree of guilt. It is as well to observe, however, that although forfeiture is an inseparable incident to *felony*, yet forfeiture of *land* is not always a necessary consequence; for petit larceny, although a felony, does not occasion forfeiture of *lands*; *every* species of felony, however, is followed by forfeiture of goods and personal chattels.—3 *Inst.* 15; 4 *Bl.* 94, 95.

FELONY UNDER COLOUR OF LAW. —A felony committed by a man's entering a house and taking the goods thereout, professing to do so by virtue of a writ of execution.—8 *Mod.* 76.

FEME-COVERT. A married woman.—See tit. *Covert-Baron.*

FEME-SOLE. A woman alone, i. e. an unmarried woman, a single woman. Hence a married woman, who by the custom of London trades on her own account, *independently of her husband*, is called a *feme sole trader*, or a *feme sole merchant;* because with respect to her trading, she is the same as a *feme sole*, or single woman. —1 *Rol. Abr.* 351; 4 *Cruise*, 14.

FEME-SOLE TRADER. See tit. *Feme-sole.*

FENCE-MONTH. In the forest laws, a period of thirty-one days in the year, during which time it is unlawful for any man to hunt in the forest, because at that season the female deer are fawning. This period commences fifteen days before Midsummer and continues until fifteen days after. It is also called *defence month*, because the deer are then to be defended from the annoyance of sportsmen and others.—*Les Termes de la Ley.*

FEOD, FEUD, FIEF, or FEE. A tract of land acquired by the voluntary and gratuitous donation of a superior; and held on condition of fidelity and certain services, which were in general of a military nature. The possessor of them took the *juramentum fidelitatis* or oath of fealty; and in case of the breach of this condition and oath, by not performing the

stipulated service, the lands were again to revert to him who granted them. The first and most general division of feods was into *proper* and *improper* ones. Proper feuds were such as were purely military, given *militiæ gratia*, without price, to persons duly qualified for military service. Improper feuds were those which did not, in point of acquisition, services and the like, strictly conform to the nature of a mere military feud; such as those that were sold or bartered for any equivalent, or granted free from all services, or in consideration of any *certain* return of services. A *feudum ligeum* was that for which the vassal owed fealty to his lord against all persons whatever without any exception. A *feudum non ligeum* was that for which the vassal owed fealty to his immediate lord; but with an exception in favour of some superior lord. A *feudum antiquum* was that which had descended to the vassal from his father, or some more remote ancestor. A *feudum novum* was that which was originally acquired by the vassal himself. A feud granted by a sovereign prince, to hold immediately of himself with a jurisdiction, was called *feudum nobile*, and conferred nobility on the grantee: and when a title of honour was annexed to the lands so granted, it was called *feudum dignitatis*.—1 *Cruise*, 4, 11; 2 *Bl.* 45, 46.

FEODAL or FEUDAL. Relating or belonging to a *feod* or fee: thus the *feodal* law signifies the law or doctrine of *feods*. *Real* actions, that is, such as concern real or landed property, are called in the Mirror *feodal* actions.—2 *Bl.* 44; 3 *Bl.* 118.

FEODALITY. The fealty or fidelity which the feodal tenures required the tenant to pay to his lord. —*Cowel.* See also tit. *Feal.*

FEODARY or FEUDARY (*feudatarius*). An officer in the Court of Wards, appointed by the master of that court, by virtue of the statute 32 Hen. 8, c. 46, to be present with the escheator in every county at the finding of offices, and to give in evidence for the king, as well for the value as the tenure. It was also a part of his office to survey the lands of the ward after the office found, and to return the true value thereof into court; to assign dower unto the king's widow, to receive all the rents of the ward's lands within his circuit, and to be answerable for them to the receiver of the court. This office was abolished by 12 Car. 2, c. 24.—*Kennet's Gloss.*

FEODATORY. The grantee of a feod or fee who had only the use and possession thereof, according to the terms of the grant, was styled the *feodatory* or *vassal*, which was only another name for the tenant, or holder of lands by feodal service. A *feodatory* is also sometimes termed a *homager*.—2 *Bl.* 53.

FEODUM. See tit. *Feod.*

FEODUM LAICUM. See tit. *Feodum Militis.*

FEODUM MILITIS. A knight's fee; by some computed to be about four hundred and eighty acres. A *feodum laicum* was a lay fee, or land held in fee from a lay lord, by the common services to which military tenure was subjected, in contradistinction to the ecclesiastical tenure of *frankalmoign*, which was not liable to those services.—*Cowel; Litt. s.* 133.

FEOFFMENT (*feoffamentum*), from the verb *feoffare*, to enfeoff or give one a feud). This word is generally defined to be "a gift of lands, tenements, or hereditaments, to a man and his heirs for ever, accompanied

by the delivery of seisin, and the possession of the thing granted." The deed or instrument by which such a donation is effected is also termed a *feoffment*, and he who so gives, or enfeoffs, is termed the *feoffor*; and the person to whom the lands are given is denominated the *feoffee*; and by such a gift he is said to be *enfeoffed*. In order to constitute such a gift a *feoffment*, *livery of seisin* was absolutely necessary, without which the *feoffee* had but a mere estate at will. This *livery of seisin* was nothing else than the pure feodal investiture, or delivery of corporeal possession of the lands or tenements to the *feoffee*. A *feoffment* was formerly the usual mode of conveying the freehold from man to man; but of late years it has been almost entirely superseded by the conveyance by *lease and release*.—*Co. Litt.* 9; 2 *Bl.* 311; 4 *Cruise*, 49.

FEOFFOR and FEOFFEE. See tit. *Feoffment.*

FEORME. See tit. *Farm.*

FERÆ NATURÆ (*of a wild nature*). For the purpose of considering animals as objects of property, the law distinguishes between those which are *domitæ*, or of a tame or domestic nature, such as horses, cows, sheep, poultry, &c. and those which are *feræ naturæ*, of a wild nature, such as foxes, hares, wild fowl and the like. —2 *Bl.* 380.

FERDFARE (from the Sax. *fyrd*, an army, and *fare*, a journey). To be quit, or discharged from the obligation of going to war.—*Flet. lib.* 1, *c.* 47.

FERDWIT (from the Sax. *fyrd*, an army, and *wite*, a penalty). To be quit of murder committed in the army. In another sense it is used for a fine or *penalty*, imposed on persons for not serving in the wars, which, according to the feudal tenures, landholders were obliged to do.—*Cowel.*

FERIAL DAYS (*dies feriales*). The week days or working days as distinguished from Sunday.—*Cowel.*

FERME. See tit. *Farm.*

FESTINGMEN. To be free of *festingmen*, says Cowel, is in all probability to be free of *frankpledge*, and not to be bound for any man's forthcoming, who should transgress the law.—*Cowel.*

FEU or FEW. A free and gratuitous right to lands made to a person in consideration of his performing some service according to the proper nature thereof, as the payment of an annual sum of money, or a return in grain or corn, &c.; and this kind of tenure is called *feu-holding*, and the rent is sometimes termed *feu* or *feu annuals*.—*Scot. Dict.*

FEU or FEU-HOLDING. See tit. *Feu.*

FEU or FEU-ANNUALS. See tit. *Feu.*

FEUD. See tit. *Feod.*

FEUD, *Deadly*. See tit. *Deadly Feud.*

FEUDAL ACTION. See tit. *Feodal.*

FEUDAL. See tit. *Feodal.*

FEUDARY. See tit. *Feodary.*

FEUDATORY. See tit. *Feodatory.*

FEUD-BOTE. A recompense made to a party for engaging in a deadly feud.—*Cowel*; and see tit. *Deadly Feud.*

FEU-ANNUALS. See tit. *Feu.*

FEU-HOLDING. See tit. *Feu.*

FIAR. In the Scotch law the person in whom the absolute property of an estate is vested, subject to a life-renter's estate, and is used in opposition to such life-renter.—*Scot. Dict.*

FIAT (Lat. *let it be done*). A short order or warrant of a judge commanding or permitting something to be done: thus on a petition to the king for his warrant to bring a writ of error in parliament, he writes on the top of the petition *fiat justitia*, and thereupon the writ of error is made out, in order that *justice may be done* in the matter.—*Dyer*, 385.

FIAT IN BANKRUPTCY. An authority or command addressed by the Lord High Chancellor to a court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint against the bankrupt in the court to which such fiat is addressed. It is by force of this document that the court of bankruptcy is authorized to hear, and the petitioning creditor to prosecute, the complaint against a bankrupt.—See *Arch. Bank. App.* 5.

FICTION OF LAW (*fictio juris*). A statement assumed to be true although in reality not so. *Fictions* are frequently admitted in our law, for the purpose of furthering justice. An instance of the practical application of one of these fictions may be mentioned in the case of feigned issues, where, for the purpose of raising an issue as to any given fact, a supposed wager is stated to have taken place between the litigant parties as to the existence of such fact.—See tit. *Feigned Issue.*

FIDEJUSSORS. Sureties (in the nature of bail) for a defendant's appearance when he has been arrested by process of the courts of admiralty.—1 *Roll. Abr.* 531; 3 *Bl.* 108.

FIDEM MENTIRI (*fides mentior*, to break one's faith). In Leg. H. 1, c. 53, it is applied to a tenant who breaks his oath of fealty.—*Cowel.*

FIDUCIARY ESTATE. An estate held in trust is so termed, from the fiduciary character of him who is the legal tenant of such estate, i. e. the trustee.

FIEF. See tit. *Feod.*

FIERI FACIAS (*that you cause to be done*). A writ of execution directed to the sheriff commanding him to levy of the goods and chattels of the defendant the sum due to the plaintiff, &c.

FIFTEENTHS. A tax imposed on all personal property about the time of Henry the Second, consisting of a real *fifteenth* part of all the moveables belonging to the subject. Of a similar nature were *tenths*, which are said to have been first granted under Henry the Second, who took advantage of the fashionable zeal for crusades, to introduce this new taxation in order to defray the expense of a pious expedition to Palestine against Saladin, Emperor of the Saracens; whence it was denominated the *Saladin tenth*. The land-tax in its modern shape has superseded the above methods of rating property.—2 *Inst.* 77; 1 *Bl.* 308.

FIGHTWITE (Sax.) A mulct or fine imposed on a person for promoting a fight or quarrel to the disturbance of the peace.—*Cowel.*

FILACER or FILAZER (from the Fr. *file*, a file). An officer of the Court of Common Pleas, so called because he *filed* the writs whereon he

made out process. It was his duty also to enter the appearance of defendants, as also special bails, &c.—*Les Termes de la Ley.* This office was abolished by 7 Wm. 4 & 1 Vict. cap. 30.

FILING OF RECORD. Filing amongst the records of the court.

FINAL JUDGMENT. A judgment is either final or interlocutory. A judgment is termed *interlocutory*, when something further remains to be done in the suit before the party in whose favour the judgment is obtained, is entitled to issue execution thereon. Thus, when a defendant in an action of assumpsit, omits pleading to the declaration, and so suffers judgment to go against him by default, such a judgment would be *interlocutory* only, because something yet remains to be done before he is entitled to issue execution thereon; viz. the amount of damages which the plaintiff has sustained has first to be ascertained, and in order to ascertain this, it frequently becomes requisite to summon a jury to assess the damages, and not until such an assessment has been made would the plaintiff in such a case be entitled to execution. A judgment is termed *final* when no such intermediate process is requisite before the party in whose favour the judgment is given is entitled to sue out execution; the judgment being at once complete and entitling the party to obtain the fruits of his judgment, without any further inquiry being requisite for the purpose of ascertaining its amount. See also tit. *Interlocutory Judgment*, and tit. *Judgment.*

FINAL PROCESS. Writs of execution, such as the fieri facias and capias ad satisfaciendum, are commonly so termed, because they are resorted to at the *end* or termination of an action, for the purpose of obtaining for the successful party the fruits of his judgment. The phrase is frequently used in contradistinction to *mesne process*, that being the process adopted for the purpose of *commencing* an action. See tit. *Mesne Process.*

FINDING OF A JURY. Is the verdict which the jury return. They are in common parlance said to "*find*" a verdict, either for the plaintiff or defendant.

FINE (*finis*). A species of assurance, which before the 3 & 4 Wm. 4, c. 74, was commonly in use for assuring estates of freehold. It is defined to be an amicable agreement or composition of a suit, whether real or fictitious, between the demandant and tenant, with the consent of the judges, and enrolled among the records of the court where the suit is commenced, by which lands and tenements are transferred from one person to another; or any other settlement is made respecting them. Although this mode of conveying lands is not now in use, from the circumstance of *fines* having been abolished by the above act of parliament, yet the subject is sufficiently important to demand some consideration. The following brief history of the origin and nature of fines, and of the mode in which they operate as assurances, may therefore not be altogether out of place. We shall, therefore, proceed to give a short history of it. When landed property first became the subject of alienation, it was found necessary to adopt some authentic mode of transfer, which might secure the possession, and evidence the title of the purchaser. By the ancient common law, a charter of feoffment was in general the only written instrument whereby lands were transferred or conveyed. But although this assurance derived great authenticity from the number of witnesses by

whom it was usually attested, and the solemn and public manner in which livery of seisin was given upon it; yet still it may be supposed that inconveniences would frequently arise, either from the loss of the charter itself, or from the difficulty of proving it after a lapse of years. These circumstances probably induced men to look out for some other species of assurance, which should be more solemn, more lasting, and more easily proved than a charter of feoffment. Experience must soon have discovered that no title could be so secure and notorious, as that which had been questioned by an adverse party, and confirmed by the determination of a court of justice; and the ingenuity of mankind soon found out a method of deriving the same advantage from a fictitious process. To effect this purpose the following plan was adopted; a suit was commenced concerning the lands intended to be conveyed, and when the writ was sued out, and the parties appeared in the court, a composition of the suit was entered into, with the consent of the judges, whereby the lands in question were declared to be the right of one of the contending parties. This agreement, being reduced into writing, was enrolled among the records of the court, where it was preserved by the proper officer, by which means it was not so liable to be lost or defaced as a charter of feoffment; and being a record would at all times prove itself. It had also another advantage, that being substituted in the place of the sentence which would have been given, in case the suit had not been compounded, it was held to be of the same nature and of equal force with a judgment of the court. When this species of agreement was completed, a writ issued to the sheriff of the county in which the lands lay, in the same form as if a judgment had been obtained in an adversary suit, directing him to deliver seisin and possession to the person who thus acquired the lands. The mode of levying a fine, as it was called, and the various parts of it are as follow. The party to whom the land was to be conveyed or assured commenced an action or suit at law against the other, generally an action of covenant, by suing out a writ of *præcipe*, called a writ of covenant; the foundation of which was a supposed agreement or covenant, that the one convey the lands to the other, on the breach of which agreement the action was brought. On this writ there was due to the king by ancient prerogative *a primer fine*, or a noble for every five marks of land sued for; that is, one tenth of the annual value. The suit being thus commenced, then followed the *licentia concordandi*, or leave to agree the suit. For as soon as the action was brought, the defendant, knowing himself to be in the wrong, was supposed to make overtures of peace and accommodation to the plaintiff, who accepting them, but having, upon suing out the writ, given pledges to prosecute his suit, which he endangers if he now deserts it without a licence, therefore applied to the court for leave to make the matter up. This leave was readily granted, but for it there was also another fine due to the king by his prerogative, which was an ancient revenue of the crown, and was called the *king's silver*, or sometimes the *post fine*, with respect to the *primer fine* before mentioned. And it is as much as the *primer fine* and half as much more, or ten shillings for every five marks of land; that is, three twentieths of the supposed annual value. Next came the *concord*, or agreement itself, after leave obtained from the court; which was usually an acknowledgment from the deforceants (i. e. those who keep the other out of possession) that the lands in question were the right of the complainant. And from this acknow-

ledgment or recognition of right, the party levying the fine was called the *cognisor*, and he to whom it was levied the *cognisee*. This acknowledgment must have been made either openly in the Court of Common Pleas, or before the Lord Chief Justice of that court; or else before one of the judges of that court, or two or more commissioners in the country, empowered by a special authority called a writ of *dedimus potestatem*, which judges and commissioners are bound by statute 18 Edw. 1, st. 4, to take care that cognizors be of full age, sound memory, and out of prison. If there be any feme-covert among the cognizors she is privately examined whether she does it willingly and freely or by compulsion of her husband. By these acts all the essential parts of a fine were completed, and if the cognizor died the next moment after the fine was acknowledged, provided it was subsequent to the day on which the writ was made returnable, still the fine could be carried on in all the remaining parts; of which the next is, the *note* of the fine, which is only an abstract of the writ of covenant, and the concord naming the parties, the parcels of land, and the agreement. This must be enrolled of record in the proper office by direction of the statute 5 Hen. 4, c. 14. The fifth part is the *foot* of the fine, or conclusion of it, which includes the whole matter, reciting the parties, day, year, and place, before whom it was acknowledged or levied. Of this there are indentures made or engrossed at the chirographer's office, and delivered to the cognizor and the cognizee, usually beginning thus, *Hæc est finalis concordia*, "this is the final agreement," and then reciting the whole proceeding at length. And thus the fine is completely levied at common law. This kind of assurance was called a *fine, finis*, or *finalis concordia*, from the words with which it began, and also from its effect, which was to put a final end to all suits and contentions.—*5 Cruise, 56*; *2 Bl. 350.*

FINE ADNULLANDO LEVATO DE TENEMENTO QUOD FUIT DE ANTIQUO DOMINICO. A writ which formerly lay for the *disannulling of a fine* levied of lands held in ancient demesne, to the prejudice of the lord. —*Reg. Orig. 15.*

FINE CAPIENDO PRO TERRIS, &c. A writ which formerly lay for a person who, having been convicted of an offence by a jury, forfeited his lands and goods to the king, and was also committed to prison, to have his imprisonment remitted and his lands and goods re-delivered to him, in consideration of his having obtained favour by payment of a sum of money.—*Reg. Orig. 142.*

FINE FORCE. An absolute necessity or unavoidable restraint: as when a man is constrained to do that which he cannot avoid, he is said to do it *de fine force.*—*35 H. 8, c. 12*; *Old Nat. Brev. 78.*

FINE NON CAPIENDO PRO PULCHRE PLACITANDO. See tit. *Beau-Pleader.*

FINE PRO REDISSEISINA CAPIENDA. A writ that lay for the release of a person who had been imprisoned for a *redisseisin*, on his paying a reasonable fine.—*Reg. Orig. 222.*

FINES FOR ALIENATION. One of the incidents of tenure by knight service was that of *fines* due to the lord for every *alienation*, whenever the tenant had occasion to make over his land to another. With us in England these *fines* seem only to have been exacted from the king's tenants *in capite*, who could not alien without a license, without being sub-

ject to an absolute forfeiture of their land.—2 *Inst.* 66—67.

FINES LE ROY. The king's fines.

FINIRE. To fine or pay a fine upon composition. It is also the same as *finem facere* in Brompton, p. 1105, and Hoveden, 783.—*Cowel.*

FINITIO. *Death;* because *vita* finitur *morte.*—*Cowel.*

FIRDFARE. See tit. *Ferdfare.*

FIRDWITE. See tit. *Ferdwit.*

FIRE AND SWORD, *Letters of.* Formerly when a tenant retained possession contrary to the order of a judge or judgment of a court, letters of *fire and sword* issued from the privy council in Scotland, directed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess the tenant.—*Tomlins.*

FIREBOTE. An allowance of wood, &c. to burn in the house, which tenants are entitled to take from off the lands granted them: it is sometimes called housebote.—2 *Bl.* 35; and see tit. *Common.*

FIRE ORDEAL. See tit. *Ordeal.*

FIRMA. Provisions, rent, victuals, &c. See tit. *Farm.*

FIRMA ALBA. See tit. *Alba Firma.*

FIRMA NOCTIS. A customary tribute formerly paid towards the entertainment of the king for one night. *Firma Regis,* anciently *pro villa Regis, seu Regis manerio.* By a charter of King *Edgar* to *Ely* it is limited to a penalty, to pay one night's *ferme,* if the privileges be broken by any man.—*Domesday; Cowel.*

FIRST FRUITS (*primitiæ*). The first year's whole profits of a benefice or spiritual living. These were originally part of the papal usurpations over the clergy of this kingdom: and as they expressed their willingness to contribute so much of their income to the head of the church, it was thought proper, when the papal power was abolished, and the king declared the head of the Church of England, to annex this revenue to the crown; which was done by stat. 26 Hen. 8, c. 3 (confirmed by stat. 1 Eliz. c. 4), and a new *valor beneficiorum* was then made, by which the clergy have since been rated.—1 *Bl.* 284, 285.

FISHERY. See tit. *Piscary;* and see also tit. *Common.*

FISH ROYAL. One branch of the king's ordinary revenue, said to be granted on the consideration of his guarding and protecting the seas from pirates and robbers, is the right to *royal fish,* which are whale and sturgeon; and these, when either thrown ashore, or caught near the coast, are the property of the king, on account of their superior excellence.—1 *Bl.* 290.

FISK (from *fiscus,* the treasury, or exchequer, &c.) Said to be the right of the crown to the personal estate of a person who has been denounced rebel.—*Scotch Dict.*

FITHWITE or FIHTEWITE. A fine or penalty imposed on a person for breaking the peace.—*Cowel.*

FIXED TERM. Seems to be a term the duration of which is positively fixed, in opposition to those terms which vary in length according to certain circumstances. Thus, by stat. 11 Geo. 4 & 1 Will. 4, c. 70, it is enacted, that Hilary Term shall begin on the 11th and end on the

31st of January; Easter Term shall begin on the 15th day of April and end on the 8th of May; Trinity Term shall begin on the 22nd day of May and end on the 12th day of June; and Michaelmas Term shall begin on the 11th and end on the 25th day of November. Thus far it would seem that all the terms were fixed terms, but there is a proviso to this section of the statute introducing the distinction above mentioned, for "it is provided that if the whole or any number of the days intervening between the Thursday before and the Wednesday next after Easter Day shall fall within Easter Term, there shall be no sittings in banc on any of such intervening days, but the term shall, in such case, be prolonged and continue for such number of days of business as shall be equal to the number of the intervening days before-mentioned, exclusive of Easter Day, and the commencement of the ensuing Trinity Term shall in such case be postponed, and its continuance prolonged for an equal number of days of business."

FLEDWITE or FLIGHTWITE (from the Sax. *flyht*, i. e. flight; and *wite*, a fine or penalty). This word signifies in our ancient law a discharge from amerciaments, when a person having been an outlawed fugitive returns to the peace of our lord the king either of his own accord or with license. But it has been well suggested whether it does not rather signify a mulct or fine set upon a fugitive to be restored to the king's peace.—*Rastal; Cowel.*

FLEET (from the Sax, *fleot*, i. e. a place where water ebbs and flows). The name of the celebrated prison lately standing in Farringdon Street: it was said to be so called from the circumstance of its standing by the side of a river. Some authors say that it was so called from a river or *ditch* that was formerly by the side of it.—*Camd. Brit.* 317.

FLEM and FLETH (Sax. *flema*, an outlaw, *flet* a house). In a plea of *quo warranto*, Abbas de Burgo dicit quod clamat annum et vastum et medium tempus per hæc verba *Flem* et *Fleth.*—*Prin.* 7 *Ed.* 3.

FLEMAFLARE (from the Sax. *flema*, a fugitive or outlaw, and *flean*, to kill or slay). By virtue of this word were claimed the felon's goods, as appears upon a *quo warranto.*—*Keilway's Rep.* 145; *Cowel.*

FLEMENESFIRINTHE or FLYMENAFYRINTHE (from the Sax. *flema*, an outlaw, and *firmean*, to administer food, to take care of, &c.) The receiving or relieving a fugitive or outlaw.—*Cowel.*

FLEMISWITE. The liberty a person had of taking the cattle and amerciaments of his fugitive man.—*Les Termes de la Ley.*

FLOTSAM or FLOATSAM (from the Sax. *fleotan*, to swim). A word signifying any goods that are lost by shipwreck, and lie *floating* or swimming at the top of the water, and which the lord admiral is entitled to by virtue of his letters patent.—1 *Bl.* 292.

FOCAGE. The same as housebote, or fire-bote. See those titles.

FOCAL. See tit. *Fire-Bote.*

FŒNUS NAUTICUM. When a man lends a merchant a sum of money to be employed in a beneficial trade, with condition to be repaid with extraordinary interest, in case such a voyage be safely performed, this kind of agreement is sometimes called *fœnus nauticum* and

sometimes *usura maritima*.—*Moll. de Jure Mar.* 361; 2 *Bl.* 458.

FOLDAGE and FOLDCOURSE. See tit. *Faldage*.

FOLK LAND or FOLC LAND. *Terra vulgi*, the land of the vulgar or common *folk*; it was held by no assurance in writing, but was distributed among the common *folk* or people at the pleasure of the lord, and resumed at his discretion, being indeed land held in villenage, and was a species of tenure neither strictly feudal, Norman, nor Saxon, but composed of them all; the tenants thereof being called villeins. From these *folklands*, or estates held in villenage, our present copyhold estates are by some supposed to have originated, although on the other hand there are not wanting authorities who question this origin of copyholds. Those who may wish to read the opinions upon this subject will find them fully stated in *Doug.* 698; *Hallum's Mid. Ages*, c. 8; and *Elementa Juris Privati Germanici*. See also this Dictionary, tit. *Copyhold*.

FOLK-MOTE or FOLC-MOTE (from the Sax. *Folkgemote*, an assembly of the people). There were various significations to this word; Manwood, in his Forest Laws, describes *folke* to be a court holden in London wherein all the *folk* and people of the city did complain of the mayor and aldermen for some misgovernment within the city. But Spelman, and other authorities, say that it was a sort of annual parliament or convention of the bishops, thanes, aldermen and freemen upon every May-day, where the laymen were sworn to defend one another, to swear fealty to the king, and to preserve the laws of the kingdom; and then to consult of common safety, peace, and war, and public weal. Dr. Brady seems to think that the folk-mote was an inferior court, held before the king's reeve or steward every month, to do *folk right*, or to adjust petty differences among the people, whence an appeal lay to the superior courts. When such an assembly belongs to a city it is called a *burgemote*, when to a county a *shire-gemote*.—*Brady's Gloss.* 48; *Leg. Alfred*, c. 35; *Turner's Hist. Ang. Sax.*

FOOT-GELD (from the Sax. *fot*, foot, and *geldan*, to loose, &c.) In the forest laws signifies an amerciament or a fine for not cutting out the bulbs of dogs' feet in the forest. And to be free or quit of foot-geld, is a privilege to keep dogs within the forest unlawed without punishment or control.—*Cromp. Jurisd.* 197.

FORBARRE or FORBAR. To bar or deprive for ever.—9 *Rich.* 2, c. 2.

FORBATUDUS, FORFACTUS. These words are applied to an aggressor who is slain in combat.—*Cowel.*

FORCIBLE ENTRY AND DETAINER. Forcible entry is a violent and actual entry into houses or lands; and *forcible detainer* or keeping possession, is the violent act of resisting by force, and keeping possession, so that the rightful owners are hindered or barred from making a lawful entry on the premises.—*Les Termes de la Ley.*

FORECHEAPUM (from the Sax. *fore*, before; and *ceapan*, to buy, to merit, &c.) Præemption.—*Cowel.*

FORECLOSURE OF EQUITY OF REDEMPTION. When a mortgagor is said to be *foreclosed of his equity of redemption*, it signifies that he is barred or deprived of the privilege of *redeeming* his estate. For further information on this subject the reader is referred to titles *Equity of Redemption*, and *Mortgage*.

FOREIGN. This word is used in various senses. Thus *foreign matter* is matter triable or done in another county; *foreign plea* is where one objects to the judge as incompetent, because the matter to be tried is not within his jurisdiction; *foreign answer* is such an answer as is not triable in the county where it is made; *foreign service* is such service by which a mesne lord holds of another not within the compass of his own fee, or that which a tenant performs either to his own lord or to the lord paramount out of the fee; *foreign attachment* is defined under title *Attachment; foreign apposer* is an officer in the Exchequer, whose business it is to examine the sheriffs' estreats with the record, and to receive the sheriffs' answers to every particular item therein; *foreign court*, is a court at Leominster, within the jurisdiction of the manor, but not within the liberty of the bailiff of the borough; there are also courts of this description in other places.—*Les Termes de la Ley; Cowel.*

FOREIGN ATTACHMENT. See tit. *Attachment, Foreign.*

FOREIGN OPPOSER or APPASER. See tit. *Foreign.*

FOREJUDGER (*forisjudicatio*). A judgment by virtue of which a man is deprived or put by the thing in question: thus, when an attorney or other officer of a court is expelled the same for some offence, or for not appearing to an action, he is said to be *forejudged the court.*—*Spelman; Les Termes de la Ley.*

FORESCHOCKE (*derelictum*). Much the same as the word *forsaken*. This word is particularly used in one of our statutes for lands or tenements seized by the lord, on account of the tenant's having neglected to perform his services, and quietly held by such lord beyond a year and a day. For the tenant who, seeing his lands and tenements taken into the lord's hands, and possessed so long, does not take the course prescribed by law to recover them, is presumed to *forsake* or disavow all the right he has in them, and in this case such lands are called *foreschoke.*—10 *Ed.* 2, *c.* 1.

FOREST LAW. A particular system of laws relating to the forests of the early kings of England. Under it great cruelties were committed, which at last were put an end to by the *Carta de Foresta*, which title see. —1 *Reeves's His. E. L.* 206; 2 *Hallam, Mid. Ages*, 426.

FORESTAGIUM. Duty or tribute payable to the king's foresters, as *chiminage* or such like.—*Chart.* 18 *Ed.* 1; *Cowel.*

FORESTALL, *To.* See tit. *Forestalling.*

FORESTALLING. By the stat. 5 & 6 Edw. 6, c. 14, it is described to be the buying or contracting for any merchandise or victual, &c. in its way to the market, with the intention of selling it again at a higher price; or the dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there.—4 *Bl.* 158.

FORESTALLER. One who is guilty of the offence of *forestalling.*

FORESTER. An officer of the forest sworn to preserve the vert and venison therein, and to apprehend all offenders there, and to present them at the courts of the forest, in order that they may be punished according to their offences.—*Les Termes de la Ley.*

FORFEITURE (from the Fr. *forfaiture*, a fine). Forfeiture is defined

to be a punishment annexed by law to some illegal act or negligence in the owner of lands, tenements or hereditaments, whereby he loses all his interest therein, and they go to the party injured, as a recompense for the wrong which either he alone or the public together with himself has sustained. Thus a forfeiture may be incurred by a person alienating or conveying lands to another contrary to law; by non-presentation to a benefice, which is also denominated a *lapse;* by non-performance of conditions; by waste; by breach of copyhold customs, &c.; and *forfeiture* incurred by such acts may be termed *civil forfeitures*, because these offences are of a *civil*, and not of a criminal nature. *Forfeitures* may be also occasioned by the commission of crimes and misdemeanors; as in cases of treason, felony, misprision of treason, and the like, and such forfeitures may be termed *criminal forfeitures*, because these offences are of a *criminal*, and not a civil nature.—*Vin. Abr.;* 2 *Bl.* 267. See also tit. *Felony*.

FORFEITURE OF MARRIAGE (*forisfactura maritagii*). A writ which lay for the lord against his tenant by knight service, who refused her whom the lord offered him in marriage, and while yet within age married another without his lord's consent.—*Fitz. Nat. Brev.* 141; *Les Termes de la Ley.*

FORGAVEL (*forgabulum*). A quit rent; a small reserved pecuniary rent.—*Cowel.*

FORGERY (from the Fr. *forger*, to fabricate), is defined by Blackstone to be "the fraudulent making or alteration of a writing to the prejudice of another man's right.—4 *Bl.* 247.

FORINSECUM MANERIUM. That part of a manor which lies without the bars or limits of a town, and is not included within the liberties of it.—*Ken. Paroch. Antiq.* 351.

FORINSECUM SERVITIUM. The payment of aid, scutage, and other *extraordinary* burdens of military service; as opposed to *intrinsecum* servitium, which was the common and *ordinary* duties within the lord's court and local liberties.—*Kennett's Gloss.*

FORISBANNITUS. Banished.—*Mat. Paris.*

FORISFAMILIARI. A son is said to be *forisfamiliari* when he accepts of his father's part of his lands in the lifetime of the father, and is contented with it, so that he cannot claim any more.—*Cowel.*

FORLET-LAND. Land in the bishopric of Hereford granted or leased *dum episcopus in episcopatu steterit*, that the successor might have it for his present income; and although this custom has been long disused, and the land granted by lease the same as other lands, yet it still retains its ancient name.—*Butterfield's Survey*, 56.

FORMA PAUPERIS (*in the form of a pauper*). A person will be admitted to sue or to continue a suit *in formâ pauperis*, if he obtain a certificate from a barrister that he has a good cause of action, and will make an affidavit that he is not worth 5*l.*, excepting his wearing apparel and the matter in question. The proceeding is by petition to the chief judge of the court, and if it is granted, the pauper's counsel, attorney and officers of the court, shall act for him gratis; but if he be plaintiff in the action, and recover, their fees shall afterwards be paid.—See *stat.* 11 *Hen.* 7, *c.* 12; 2 *Arch. Prac. Att.* 216.

FORMAL TRAVERSE. A special traverse is sometimes so called. As to what is a special traverse, see that title.

FORMEDON (*breve de forma donationis*). An action in the nature of a writ of right. Thus, upon an alienation by a tenant in tail, whereby the estate tail is *discontinued*, and the remainder or reversion is, by failure of the particular estate, displaced and turned into a mere right, the remedy is by action of *formedon* (*secundum formam doni*). This writ is distinguished into three species: a *formedon* in the *descender*, in the *remainder*, and in the *reverter*. A writ of *formedon* in the *descender* lieth where a gift in tail is made, and the tenant in tail alienes the lands entailed, or is disseised of them, and dies, in this case the heir in tail shall have this writ of *formedon* in the *descender* to recover these lands so given in tail, against him who is then the actual tenant of the freehold. In which action the demandant is bound to state the manner and form of the gift in tail, and to prove himself heir *secundum formam doni*. A *formedon* in the *remainder* lieth where a man giveth lands to another for life or in tail, with remainder to a third person in tail or in fee; and he who hath the particular estate dieth without issue inheritable, and a stranger intrudes upon him in remainder, and keeps him out of possession. In this case the remainderman shall have his writ of *formedon* in the *remainder*, wherein the whole form of the gift is stated, and the happening of the event upon which the remainder depended. A *formedon* in the *reverter* lieth where there is a gift in tail, and afterwards by the death of the donee or his heirs, without issue of his body, the reversion falls in upon the donor, his heirs, or assigns; in such case the reversioner shall have this writ to recover the lands, wherein he shall suggest the gift, his own title to the reversion minutely derived from the donor, and the failure of issue upon which his reversion takes place.—3 *Bl.* 191; *Co. Litt.* 219.

FORPRISE (from the Fr. *fors*, out of, beyond; and *prise*, taken). An exception or reservation, and was commonly used in conveyances and leases, when anything was to be reserved or excepted out of the subject of the conveyance or demise.—*Cowel.*

FORSPEAKER. An attorney or an advocate.—*Cowel.*

FORTHCOMING, *Action of.* In the Scotch law is of a similar nature to a foreign attachment.—*Tomlins.*

FORTUNA. What we call *treasure-trove.*—*Cowel.*

FORTY DAYS COURTS. See tit. *Attachment.*

FOSTERLEAN (Sax.) A nuptial gift, jointure, or stipend, for the maintenance of a wife.—*Cowel.*

FOURCHER, from the French *fourchir*). A putting off, prolonging, or delaying of an action. It is thus used in West. 1, c. 42.

FRANCHISE. A privilege or exemption from ordinary jurisdiction. Blackstone defines it to be a royal privilege, or branch of the king's prerogative subsisting in the hands of a subject: thus, to be a county palatine is a franchise; to hold a court leet; to have waifs, wrecks, estrays, treasure-trove, royal fish, forfeitures, and deodands, are all *franchises*; in short, any liberty or privilege granted from the crown to a person or to a body of persons, may be considered as a franchise.—3 *Cruise*, 278; 2 *Bl.* 37.

FRANKALMOIGN (*libera eleemosyna*, or free alms). Tenure in *frank-almoign* is that by which a religious corporation, aggregate or sole, holds lands of the donor to them and their successors for ever, upon consideration of performing some divine service, such as praying for the soul of the donor and his heirs, dead or alive, &c. The service which they were bound to render was not certainly defined, and therefore they did no fealty (which was incident to all other services but this), because this divine service was of a higher and more exalted character. This is the tenure by which almost all the ancient monasteries and religious houses held their lands, and by which the parochial clergy, and very many ecclesiastical and eleemosynary foundations hold them at this day, the nature of the service being upon the Reformation altered and made conformable to the purer doctrines of the Church of England. This is a tenure of a nature very distinct from all others, being not in the least feodal, but merely spiritual. For if the service be neglected, the law gives no remedy, by distress or otherwise, to the lord of whom the lands are holden; but merely a complaint to the ordinary or visitor to correct it. Wherein it materially differs from what was called *tenure by divine service*, in which the tenants were obliged to do some special divine service in certain, as to sing so many masses, to distribute such a sum in alms, and the like, which being expressly defined and prescribed, could with no kind of propriety be called *free* alms, especially as for this, if unperformed, the lord might distrain, without any complaint to the visitor.—2 *Bl.* 101.

FRANK-CHASE (*libera chasea*). A liberty of *free chase*, whereby every one who had lands within the compass of such liberty was prohibited to cut down any wood, &c. without the view or permission of the forester, even though it were in his own demesnes.—*Cromp. Juris.* 187; *Cowel.*

FRANK-FEE (*liberum feodum*). Those lands which were in the hands of the king or lord of any manor, being ancient *demesne of the crown*, are called *frank-fee*; and those which are in the hands of the tenant are ancient demesne only. It is also defined to be a tenure in fee simple of lands, pleadable at the common law, and not in ancient demesne.—*Reg. Orig.* 12; *Les Termes de la Ley.*

FRANK-FERM (*firma libera*). Lands or tenements wherein the nature of the fee has been changed by feoffment out of knight service for several yearly services, and whence no other service than that contained in the feoffment may be demanded. —*Britton*, *c.* 66; *Cowel.* See tit. *Fee-farm.*

FRANK-FOLD. See *Faldage.*

FRANK-LAW (*libera lex*). The privilege of the law's protection. Thus when a person committed any great offence, as conspiracy, for instance, and suffered the penalties consequent thereon, he was said to lose his *Frank-law.*—*Cromp. Jurisd.* 156.

FRANK-MARRIAGE (*liberum maritagium*). Estates *in libero maritagio*, or *frank-marriage*, are defined to be where tenements are given by one man to another, together with a wife, who is the daughter or cousin of the donor, to hold to them and the heirs of their two bodies begotten; that is, they are tenants in special tail; and such donees in *frank-marriage* are liable to no service but fealty; for a rent reserved thereon is void, until the fourth degree of consanguinity be past between the issues of the do-

nor and donee.—*Litt.* 19, 20; 2 *Bl.* 115.

FRANK-PLEDGE (*liberum plegium*). A pledge or surety for freemen. For according to the ancient mode of preserving the public peace in England, every free born man at fourteen years of age (ecclesiastics, knights, and their eldest sons excepted) was obliged to find surety for his good behaviour towards the king and his subjects, or else be kept in prison; whereupon a certain number of neighbours became customarily bound for one another, to see each man of his *pledge* forthcoming at all times, or to answer the transgression committed by any gone away; so that whenever any one committed an offence, it was forthwith inquired in what *pledge* he was, and then they of that *pledge* either brought him forth within thirty-one days, or made satisfaction for his offence. This was called *frank-pledge*, and the circuit thereof *decenna*, because it commonly consisted of *ten* households; and every particular person thus mutually bound for himself and his neighbours was called *decennier*, because he belonged to one *decenna* or another.—*Fleta, lib.* 2, *c.* 52; *Cowel.*

FRANK-TENEMENT. See tit. *Freehold.*

FRATER CONSANGUINEUS. A brother by the father's side, a half brother; as *frater uterinus* is a brother by the mother's side.—2 *Bl.* 232.

FRATER NUTRICUS. A bastard brother.—*Cowel.*

FRATER UTERINUS. See tit. *Frater Consanguineus.*

FRATRIAGIUM. That part of an inheritance which comes to younger brothers. — *Bracton, lib.* 2, *c.* 35; *Fleta, lib.* 2, *c.* 16.

FRANK-FERME. See tit. *Frank-Ferm.*

FREDUM. A composition paid by a criminal to be freed from prosecution, a third part of which used to be paid into the exchequer.—*Cowel.*

FREDWIT. See tit. *Fledwit.*

FREE BENCH (*francus bancus*). That estate in copyhold lands that a wife has after the death of her husband for her dower, according to the custom of the manor. It is said that a widow, to be entitled to *free bench*, must have been a virgin when espoused, and must remain chaste and continent during her viduity or widowhood. The distinction between *free-bench* and *dower* is, that free-bench is a widow's estate in such lands as her husband *dies seised of*; whereas dower is the estate of the widow in all lands in which the husband was seised during the coverture. The custom of *free-bench* prevails in many parts of the West of England. — *Godwin v. Winsmore*, 2 *Atk.* 525; 2 *Bla.* 129, 633, 638.

FREE CHAPEL. A chapel freed or exempted from the ordinary's jurisdiction.—*Les Termes de la Ley.*

FREE CONFERENCE. A free conference between the two houses of parliament differs from an ordinary conference, for instead of the duties of the managers being confined to the formal communication of reasons, they are at liberty to urge their own arguments, offer and combat objections, and endeavour by personal persuasion to effect an agreement between the houses, which the written reasons had failed to produce.—*May's Parl. Treatise*, 256.

FREE FISHERY. See tit. *Piscary.*

FREEHOLD (*liberum tenementum*). An estate of freehold is an interest in lands or other real property held by a free tenure for the life of the tenant or that of some other person, or for some other uncertain period. It was formerly described to be such an estate as could only be created by *livery of seisin*, a ceremony similar to the investiture of the feodal law. But since the introduction of certain modern conveyances by which an estate of freehold may be created without livery of seisin, this description is not sufficient. There are two qualities essentially requisite to the existence of a freehold estate: 1. Immobility, that is, the subject-matter must either be land, or some interest issuing out of or annexed to land. 2. A sufficient legal *indeterminate* duration; for even if the utmost period of time to which an estate can last is *fixed* and *determined*, it is not an estate of freehold. Thus, if lands are conveyed to a man and his heirs for ever, or for the term of his natural life, or for the term of another's life, or until he is married, or goes to Rome, he has an estate of freehold; but if lands are limited to a man for 500 years or for ninety-nine years, if he shall so long live, he has not an estate of freehold therein, because here the duration of his estate is not *indeterminate*, but is fixed and limited for a specific time, which is contrary to the nature of freehold tenure.—1 *Cruise, 55, 56.* See also tit. *Tenure* in this Dictionary.

FREEHOLDER. The tenant or holder of a freehold estate.

FREE-WARREN. See tit. *Warren.*

FREIGHT. The remuneration due to the owner of a ship for the conveyance of goods or merchandise in that ship.—*Abbot on Sh.* 246, 405.

FRENDWITE (from the Sax. *freond* a friend, and *wite* a fine or penalty). This word is thought by Cowel to signify a mulct or fine exacted of any one who harboured his outlawed friend.—*Cowel.*

FRESH DISSEISIN. Such a disseisin as a man himself might seek to defeat, that is, by his own power, without the help of the king or judges or other foreign aid; as where a *disseisin* had not taken place above fifteen days or other short period.—*Britton, cap.* 43, 55.

FRESH FINE. Such a fine as had been levied within a year past.—*Stat. Westminster* 2, *c.* 45, *anno* 13 *Ed.* 1.

FRESH FORCE (*frisca fortia*). A *force* which had been recently committed in any city or borough, as by disseisin, abatement, intrusion, or deforcement of any lands or tenements within such city or borough; and before the action of ejectment was introduced, the party who had a right to the land might by the usage of the said city or borough bring his assize or bill of *fresh force* within forty days after the force had been committed or the title to him had accrued, for the purpose of recovering his lands. *Fitz. Nat. Brev.; Les Termes de la Ley.*

FRESH PURSUIT. See tit. *Fresh Suit.*

FRESH SUIT (*recens insecutio*). When a party robbed diligently and immediately follows and apprehends the thief, or convicts him afterwards, or procures evidence to convict him; this following up of the thief is termed making *fresh suit*, and the person so robbed shall in such case have restitution of his goods. *Fresh suit* is also when the lord comes to distrain for rent or service, and the owner of the

beasts rescues them, or makes rescous (as it is termed) and drives them into another man's ground not holden of the lord, and the lord follows and takes them.—2 *Hawk. P. C. c.* 23; *Les Termes de la Ley.*

FRIBURGH or FRITHBURGH (from the Sax. *frith*, i. e. peace, and *borge*, i. e. a pledge or surety). Much the same as *frank-pledge*, only that the one was in the time of the Saxons and the other since the conquest.—*Cowel.* See tit. *Frank-pledge.*

FRIENDLESS-MAN. An old Saxon phrase for what we call an outlaw, because when put out of the protection of the law he was denied all help of his friends after certain days.—*Bract. lib.* 3, *tr.* 2, *c.* 12.

FRILING, FREOLING. A freeman: from the Sax. *freoh*, free, and *ling*, offspring, &c.—*Cowel.*

FRITHBRECH (*pacis violatio*). The breaking of the peace.—*Leg. Ethelrida, cap.* 6; *Cowel.*

FRITHSOKE, FRITHSORN (from the Sax. *frith*, peace, and *socne*, liberty). The jurisdiction of keeping the peace; according to Fleta the liberty of having *frank-pledge.*—*Cowel; Fleta.*

FRODMORTEL or FREOMORTEL (from the Sax. *freo*, free, and *morphded*, manslaughter). An immunity or freedom granted for committing manslaughter.—*Mon. Ang. tom.* 1, 173.

FRUMGYLD. An old Saxon word signifying the first payment made to the kindred of a person who had been slain, in recompense of his murder.—*Leg. Edmundi, cap. ultimo; Cowel.*

FUAGE or FOCAGE. An imposition of 12*d.* for every fire, laid on the subjects of the dukedom of Acquitaine by the Black Prince in the reign of Edward the Third; it was also called *herth-money*, and hence probably originated our *hearth-money.*—*Rot. Parl.* 25 *E.* 3; *Cowel.*

FUER (from the Fr. *fuir*, to fly). This word, although a verb, is used in a substantive sense, and is twofold; thus *fuer in fait* (or flight in fact) signifies when a man actually and apparently flies; *fuer in ley* (or flight in law) signifies when being called in the county court he does not appear until he is outlawed, for this is flight in the eye of the law.—*Staunf. Pl. Cor. lib.* 3, *c.* 22.

FUGITIVE'S GOODS. The goods of a felon who took flight, and which, after the flight were lawfully found, belonged to the king or to the lord of the manor.—5 *Rep.* 109.

FUMAGE or FUAGE. A sort of duty which was vulgarly called smoke-farthings, and which was paid by custom to the king for every chimney in the house. In some old grants it is used to signify wood for fuel.—1 *Bl.* 324. And see also tit. *Fuage.*

FUND, *Consolidated.* The consolidated fund is a fund out of which the payments of about three-fifths of the annual expenditure of the country are secured under the authority of various acts of Parliament. The payments made out of this fund do not require the annual sanction of the House of Commons, and in this respect differ from the specific grants each year made in committee of supply for the various public services, according to the estimates previously laid upon the table of the House.

FUNGIBLES. Any moveable goods which may be estimated by weight,

number, or measure; hence jewels, paintings, statues, and works of art in general are not considered as *fungibles*, because their value cannot be measured by any common standard.—*Scotch Law Dict.*

FURBOTE. See tit. *Firebote.*

FURCA et FOSSA (*gallows and pit*). These words in the ancient charters or privileges granted by the crown signified a jurisdiction of punishing felons, that is, men by *hanging*, and women by *drowning*.—3 *Inst.* 58; *Cowel.*

FURCAM et FLAGELLUM. The lowest and most degraded of all servile tenures, the bondman being at the disposal of his lord for life and limb.—*Cowel.*

FURIGELDUM. A mulct or fine paid for theft. Among the laws of King Ethelred made at Wantage, cap. 7, it is allowed that they shall be witnesses "qui nunquam *furigeldum* reddiderunt," i. e. who were never accused of theft or larceny.—*Cowel.*

FURST et FONDONG (Sax.) Time to advise or take counsel.—*Leg. H.* 1, *c.* 46.

FURTA. A right or privilege derived from the king as supreme lord of a state to try, condemn, and execute *thieves* and felons within certain bounds or districts of an honor, manor, &c. Cowel seems to be doubtful whether this word should not be read *furca*, which means directly a gallows.—*Cowel.*

FURTHCOMING. See tit. *Forthcoming.*

FURTHER MAINTENANCE OF THE ACTION, *Plea To.* A plea grounded upon some fact or facts which have arisen since the commencement of the suit, and which the defendant puts forward for the purpose of showing that the plaintiff should not *further maintain* his action. It is called a plea to the *further maintenance* of the suit, because it does not, like an ordinary plea in bar, profess to show that the plaintiff had no ground of action when he *commenced* the suit, but simply shows that he has no right to maintain it *further*. A plea of payment of money into court in satisfaction of the plaintiff's claim is in the nature of a plea to the further maintenance of the suit, such a plea admitting that the plaintiff had a good cause of action, but showing that he ought not further to maintain it, upon the ground that the money so paid in by the defendant is sufficient to satisfy all damages which the plaintiff has sustained. See *Step. Pl.* 72, *ed.* 4*th.*

FYRDERINGA. An offence or trespass for which the fine or compensation was reserved to the king's pleasure. Spelman would read it *fynderinga*, and says that it is treasure trove; but Cowel seems to think that it originally signified a going out to war, or a military expedition at the king's command, which upon refusal or neglect was punished with a *firdwite* or mulct at the king's pleasure.—*Cowel.*

G.

GABALET. See tit. *Gavel.*

GABEL or GABLE. This word seems to have various significations, but in ancient records is commonly understood to signify a rent, duty, custom, or service paid or performed to the king or any other lord; and those who paid such rent were *gablatores.* In Domesday-book the nature of the rent, &c. is signified by some

adjunct being placed to the word *gabel*; but when it is mentioned without any addition, then it usually signified the tax on salt *propter excellentiam*, but it was afterwards applied to all other taxes, as *gabelle de vins*, &c.—*Co. Lit.* 142; *Cowel.*

GABULUS DENARIORUM. Rent paid in money.—*Cowel.*

GAFOLD-GYLD. A Saxon word signifying the payment or rendering of tribute or custom; it also sometimes denotes usury.—*Cowel.*

GAFOLD-LAND or GAFUL-LAND. Land liable to tribute, tax, or rent.—*Cowel.* See tit. *Gavel.*

GAGE (*vadium*). A pledge or a pawn, &c. See tit. *Mortgage.*

GAGER DE DELIVERANCE. Where he who has taken a distress being sued has not delivered the cattle, &c. that were distrained, then he shall not only avow the distress, but *gager de deliverance*, i. e. put in surety or *pledges* that he will *deliver* them.—*Les Termes de la Ley.*

GAGER DE LEY. Wager of law. See that title.

GAINAGE (Fr. *gaignage*, gain or profit). The profit arising from the tillage of land; it is also said to signify the draft oxen, horses, wain, ploughs, &c. used for the carrying on of tillage by the baser sort of sokemen or villeins, and sometimes even the land itself.—*Les Termes de la Ley.*

GAINERY. Much the same as *gainage*, which see under that title.

GALE OF RENT. A periodical payment or reservation of rent is so termed.—*Woodfall, Land. and Ten.* 626.

GAOL DELIVERY. A commission of *gaol delivery* is an authority in the nature of a letter from the king, directed to the judges and others, empowering them to try and *deliver* every prisoner who shall be in the *gaol* when the judges arrive at the circuit town, whenever or before whomsoever indicted, or for whatever crime committed. Every description of offence, even high treason, is cognizable under this commission, and the justices may proceed upon any indictment of felony or trespass found before other justices, or may take an indictment originally before themselves; and they have power to discharge not only prisoners acquitted, but also such against whom, on proclamation made, no parties shall appear to indict them; which cannot be done either by justices of oyer and terminer, or of the peace.—4 *Chitty's Bl.* 269, 270, *and note* 15; 4 *Inst.* 168.

GARD, GARDIAN. See *Guard* and *Guardian.*

GARDIA or GUARDIA. A word that was used among the feodists to signify *custody.*—*Cowel.*

GARNISH (*pensiuncula carceraria*). Money paid by a prisoner on his entrance into gaol. This was forbidden to be taken by the 4 G. 4, c. 43, sec. 10, r. 23. The word garnish is also used for *warn*; thus to *garnish* an heir, signifies to warn an heir.—27 *El. c.* 3; *Cowel*; *Tomlins.*

GARNISHEE. The party in whose hands money is attached within the liberties of London by process issuing from the Sheriffs' Court; so called because he has had *garnishment* or warning not to pay the money to the defendant, but to appear and answer to the plaintiff-creditor's suit. Thus if an action be commenced in the Lord Mayor's or Sheriffs' Court of

the City of London against A. and it be found that he has nothing within the jurisdiction out of which to satisfy the plaintiff's claim, and thereupon a suggestion is made by the plaintiff that another person within the city is indebted to A., that other person is *warned* thereof, and if he does not deny the debt due from him to A. the debt may be attached in his (the *garnishee's*) hands.—*Com. Dig. tit. Attachment; 5 Sc. N. R.* 637.

GARNISHMENT (from the Fr. *garnir*). A warning given to a person for his appearance for the better furnishing the court with information respecting the cause; as, for example, where one is sued for the detinues of certain evidences and charters, and says that the evidences were delivered to him not only by the plaintiff, but by another also, and therefore prays that that other may be warned to plead with the plaintiff, whether the conditions be performed or not, and in this petition he is said to pray garnishment.—*Cromp. Jurisd.* 211; *Les Termes de la Ley.*

GARRANTY. See tit. *Warranty.*

GARSUMMUNE. A fine or amerciament. Spelman writes it *Gersuma.*—*Cowel.*

GAVEL (from the Sax. *gafel*). A custom, toll, tribute, yearly rent or revenue, of which there were formerly many kinds, as *gavel-corn, gavel-malt, gavel-fodder*, &c.—*Cowel.*

GAVELET (*gaveletum*). A special and ancient kind of *cessavit* used in Kent, where the custom of gavelkind prevails; by which the tenant shall forfeit his lands and tenements to the lord of whom he holds, if he withhold from him his due rent and services.—*Cowel.*

GAVELET IN LONDON. A writ used in the *hustings* of London, where the parties, tenant and demandant, appear by *scire facias*, to show cause why the one should not have his tenement again on payment of his rent, or why the other should not recover the lands in default thereof.—*Cowel; Fleta.*

GAVELGELD. A pecuniary payment, a tribute or a toll.—*Mon. Angl. tom.* 3.

GAVELKIND. A customary tenure which prevails in many parts of Kent. The distinguishing properties of this tenure are various; some of the principal are these: 1. The tenant is of age sufficient to aliene his estate by feoffment at the age of fifteen. 2. The estate does not escheat in case of an attainder and execution for felony. 3. In most places he had a power of devising lands by will, before the statute for that purpose was made. 4. The lands descend, not to the eldest, youngest, or any one son only, but to all the sons together, which was anciently the most usual course of descent all over England.—2 *Bl.* 84; *Cruise*, 1, 106.

GAVELMAN. A tenant who is liable to the payment of tribute; and hence, tenure in gavelkind has been thought to belong to land in its nature taxable.—*Somner on Gavelkind*, p. 23.

GAVELMED. A service required by the lord of his tenant, viz. to mow grass, to cut meadow land, &c.—*Somner on Gavelkind.*

GAVELREP. Bedreap, or the duty of reaping at the bid or command of the lord.—*Somner on Gavelkind.*

GAVELCESTER (Sax.) A certain measure of rent ale. Among the articles to be charged on the stewards and bailiffs of the church of Canter-

bury's manors, this of old was one. It is sometimes found under the name of Tolcester.—*Cowel.*

GAVEL-WERK (Sax.) Either *manu-opera*, or the personal labour of the tenant; or *carr-opera*, or work by his carts or carriages.—*Cowel.*

GEBURSCIR, GEBURCIPA. Neighbourhood or adjoining district. —*Leg. Edw. Conf.*

GELD (*geldum mulcta*). Signified among the Saxons money or tribute; also the compensation for a crime: hence, in our ancient laws, the word *wergeld* signified the value of a man slain, and *orfgeld*, the value of a beast slain.—*Cowel.*

GELDABLE (*geldabilis*). Taxable, liable to pay tax or tribute.—2 *Inst.* 701.

GEMOTE. A Saxon word, signifying a convention or assembly. It is used, in the laws of Edward the Confessor, for a court, viz. *Omnis homo pacem habeat eundo ad* gemotum *et redeundo de* gemoto, *nisi probatus fur fuerit.—Les Termes de la Ley.*

GENEATH. A villein. *Regis geneath*, the king's villein.—*L. Inæ, MS. c.* 19.

GENERAL ISSUE. In most of the usual actions there is a fixed and appropriate form of plea for traversing the declaration, in cases where the defendant means to deny its whole allegations, or the principal fact on which it is founded; this form of plea or traverse has been usually denominated the *general issue* in that action; and it appears to have been so called, because the issue that it tenders, involving the whole declaration, or the principal part of it, is of a more *general* and comprehensive kind than that usually tendered by a common traverse.—*Stephen on Pleading*, 167.

GENERAL REPLICATION. Is a name frequently given to the replication *de injuriâ*, from its *general* or comprehensive character, in putting in issue all the material allegations of the plea to which it is addressed.

GERSUMA. See tit. *Garsummune.*

GESTIO PRO HÆREDE. Behaviour as heir. The conduct by which an heir renders himself liable to the debts of his ancestor; which may be in various ways, as by taking possession of the title-deeds, receiving rent, &c.—*Scotch Dict.*

GESTU ET FAMA. An old obsolete writ, which lay for a person whose good behaviour was impeached. —*Lamb. Eiren. lib.* 4, *c.* 14, *p.* 532.

GEWINEDA (Sax.) A Saxon word, signifying a public convention of the people to decide a cause.—*Leg. Ethel. c.* 1, *apud Brompton.*

GEWITNESSA. The giving of evidence.—*Leg. Ethel. c.* 2, *apud Brompton.*

GIFT (*donum, donatio*). A deed of *gift* is a voluntary conveyance, not founded on the consideration of money or blood, and is said to be that deed whereby lands or goods are passed from one man to another by way of gift, wherein the word 'give' is commonly used. The conveyance of lands by *gift* (*donatio*) is properly applied to the creation of an estate tail, as *feoffment* is to that of an estate in fee; and lease to that of an estate for life or years. It differs in nothing from a feoffment, but in the nature of the estate passing by it; for the operative words of conveyance in this case are *do* or *dedi*; and *gifts* in tail are equally imperfect to pass an

estate in possession without *livery of seisin*, as are feoffments in fee-simple. A *gift* of personal property is the method of transferring the right and possession of it, whereby one man renounces, and another man immediately acquires, all title and interest therein: which may be done either in writing or by word of mouth, attested by sufficient evidence, of which the delivery of possession is the strongest and most essential. This species of conveyance however is rather suspicious; and is usually construed to be fraudulent, if creditors or others become sufferers thereby; and particularly by stat. 3 Hen. 7, c. 4, all deeds of gift of goods made in trust to the use of the donor shall be void, because otherwise persons might be tempted to commit treason or felony without danger or forfeiture; and the creditors of the donor might also be defrauded of their rights.—*Shep. Touch.* 227; 2 *Bl.* 440; 4 *Cruise, 55.*

GILD. Has various significations; sometimes it is used for a tribute or amerciament; sometimes for a fraternity, or company of persons combined together by orders and laws made amongst themselves with the king's license, &c.; *Cromp. Jurisd.; Les Termes de la Ley.*

GILDA MERCATORIA. A mercantile meeting or assembly. If the king grants to a set of men to have *gildam mercatoriam*, a mercantile meeting or assembly; this is alone sufficient to incorporate and establish them for ever.—10 *Rep.* 30; 1 *Bl.* 473.

GIST. The point, essence, or material question upon which an action hinges or turns, is termed the *gist* of the action, i. e. it is the very foundation of the action, the ground which sustains it.

GIVING RINGS. Is a custom observed by members of Serjeants' Inn when called to the degree of the coif. Each serjeant gives in a ring containing his own motto.—2 *Q. B.* 244.

GLADIUS (*jus gladii*). Signifies in the old Norman laws a supreme jurisdiction; and hence it is supposed, that at the creation of an earl he was *gladio succinctus*, to signify that he had a jurisdiction over the county.—*Camd. Brit.; Seld. Tit. of Hon.*

GLOMERELLS. Commissaries appointed to hear and determine differences between the scholars in a school or university, and the townsmen of the place. In the edict of Hugh Balsam, Bishop of Ely, *ann.* 1276, mention is made of the master of the *glomerells.*—*Cowel.*

GLOVE SILVER. Money customarily given to some servants to buy them gloves, as a reward and encouragement of their labours. The phrase *glove-money* has also been used for extraordinary rewards given to officers of the courts, &c., and to money given by the sheriff of a county in which no offenders are left for execution, to the clerk of assize and the judge's officers.—*Cowel; Tomlins.*

GO. To *go* without day, in law phraseology, signifies to be dismissed the court.—*Kitchin, f.* 193; *Cowel.*

GOD-BOTE (Sax.) A fine or amerciament for crimes or offences committed against God and religion: an ecclesiastical or church fine.—*Cowel.*

GOING THROUGH THE BAR. Is the act of calling in succession upon each barrister sitting in court to move or address the court on any business which may have been en-

trusted to him. This is done by the Lord Chief Justice, and the practice is confined to the sittings in banco.

GOOD ABEARING (*bonus gestus*). Means by a special signification the exact carriage or behaviour of a subject to a king and his liege people, to which men are sometimes on account of their loose demeanour bound. And he, who is bound to this, is more strictly bound than to the peace; for the peace is not broken without an actual affray, battery, &c., but this may be forfeited by the *number* of a man's companions or his weapons.—*Les Termes de la Ley; Cromp. Juris.* 119, 120.

GOOD CONSIDERATION. See tit. *Consideration.*

GRACE, *Acts of.* Acts of parliament for general and free pardons are called *acts of grace.*—1 *Bl.* 184.

GRANAGE. A fine or duty due to the Mayor of London of the twentieth part of salt imported by an alien.—*Les Termes de la Ley.*

GRAND ASSISE. A trial introduced by Henry the Second, by special kind of jury in a writ of right, at the option of the tenant or defendant, instead of the barbarous and Norman trial by battel.—4 *Bl.* 422.

GRAND CAPE. See tit. *Cape.*

GRAND DAYS. Certain days set apart by the various inns of court for peculiar festivity. The members of the respective inns are on such occasions regaled at their dinner in hall with more than usual sumptuousness. It is supposed that they were originally appointed by the inns upon the occasions of the learned judges being invited to dine with them.

GRAND DISTRESS (*magna districtio*). A writ which lay in real actions, and so called on account of its quality and great extent. It lay in two cases, either when the tenant or defendant was attached, and did not appear, but made default: or when the tenant or defendant had once appeared, and afterwards made default.—*Fleta, lib.* 2, *c.* 69; *Cowel.*

GRAND JURY. A jury of twelve good and lawful men respectively returned by the sheriff of every county to every session of the peace, and every commission of oyer and terminer, and of general gaol delivery; to whom indictments are preferred. They ought to be freeholders, but to what amount seems uncertain. —2 *Hale, P. C.* 154; 1 *Chit. C. L.* 310, 1.

GRAND LARCENY. See tit. *Larceny.*

GRAND SERJEANTY. See tit. *Serjeanty.*

GRANGE. This word was formerly more exclusively a law term, but has gradually become familiar: it signifies a farm-house, *granaries*, and most other outbuildings necessary for husbandry; and the person who had the care of such a place was termed *grangearius, granger* or *grange-keeper.*—*Fleta, lib.* 2, *c.* 12; *Cowel.*

GRANGEARIUS. See tit. *Grange.*

GRANT. A mode of conveyance generally applicable to incorporeal tenements, and was by the old law (independently of the Statute of Uses), appointed as the method of transferring reversions, remainders, and similar estates *in futuro.* From its applicability to incorporeal tenements arose a distinction of much practical importance between things *lying in livery* and things *lying in grant.* The former class comprehends

made use of by our courts for removing prisoners from one court into another, for the more easy administration of justice. Such is the

Habeas Corpus ad respondendum, when a man has a cause of action against one who is confined by the process of some inferior court, in order to remove the prisoner and charge him with this new action in the court above. Such is the

Habeas Corpus ad satisfaciendum, when a prisoner has had judgment against him in an action, and the plaintiff is desirous to bring him up to some superior court to charge him with process of execution. Such also are those writs of

Habeas Corpus ad prosequendum, testificandum, deliberandum, &c. which issue when it is necessary to remove a prisoner in order to prosecute or bear testimony in any court, or to be tried in the proper jurisdiction wherein the fact was committed. Such also is the writ of

Habeas Corpus ad faciendum et recipiendum, which issues out of any of the courts of Westminster Hall, when a person is sued in some inferior jurisdiction and is desirous to remove the action into the superior court, commanding the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detention (whence the writ is frequently denominated a *habeas corpus cum causâ*) *to do and receive* whatsoever the king's court shall consider in that behalf. But the great and efficacious writ in all manner of illegal confinement is that of

Habeas Corpus ad subjiciendum, directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, *ad faciendum, subjiciendum et recipiendum*, to do, submit to, and receive whatsoever the judge or court awarding such writ shall consider in that behalf.—3 *Bl.* 129, 130, 131; 1 *Bl.* 135.

HABENDUM. There are various formal parts in deeds, of which the *habendum* is one; its office is only to limit the certainty of the estate granted: it is so called because it begins with the words *to have*. In every deed of conveyance there are two principal parts, viz. the *premises* and the *habendum*; the office of the premises is to express the name of the grantor, the grantee, and the thing to be granted; the office of the habendum is to limit the estate, so that the general implication of the estate, which by construction of law passes in the premises, is by the habendum controlled and qualified. —4 *Cruise*, 289; *Les Termes de la Ley*.

HABERE FACIAS POSSESSIONEM. When a plaintiff recovers in a real or mixed action, whereby the seisin or possession of land is awarded to him, the writ of execution is either an *habere facias possessionem*, or writ of possession of a chattel interest, or an *habere facias seisinam*, or writ of seisin of a freehold.—*Finch, L.* 470; 3 *Bl.* 412. The writ of *habere facias possessionem* is the process commonly resorted to by the successful party in an action of ejectment, for the purpose of being placed by the sheriff in the actual possession of the land recovered.

HABERE FACIAS SEISINAM. See tit. *Habere facias Possessionem.*

HABERE FACIAS VISUM. A writ that formerly lay in various cases, as in dower, formedon, &c. where a *view* was required to be taken of the lands in question.— *Bract. lib. 5, tract. 3, c. 8.*

HADBOTE (Sax.) A recompense or amends for the violation of holy

orders, or for violence offered to persons in holy orders.—*Cowel.*

HÆREDE ABDUCTO. A writ that formerly lay for a lord who, having the wardship of his tenant under age, could not come personally, because he was conveyed away by another.—*Old Nat. Brev.* 93.

HÆREDE DELIVERANDO ALII QUI HABET CUSTODIAM TERRÆ. A writ directed to the sheriff commanding him to require one, who had in his custody another person's ward, to deliver him to such other person whose ward he really was, by reason of the land which he had in his possession.—*Reg. Orig.* 161; *Cowel.*

HÆREDE RAPTO. See tit. *Hærede Abducto.*

HÆREDIPETA. The next heir. *Leg. H.* 1, *c.* 70.

HÆRETICO COMBURENDO. A writ that formerly lay against one who was a heretic, who having been once convicted of heresy by his bishop, and then having abjured it, afterwards fell into it again, or into some other, and was then committed to the secular power. This writ was abolished by 29 Car. 2, c. 9.—*F. N. B.* 269.

HAIMSUCKEN. See tit. *Homesoken.*

HALF BLOOD. Where the relationship proceeds not from the same *couple* of ancestors (which constitutes a kinsman of the *whole* blood), but from a single ancestor only; as in the case of two brothers being derived from the same father but not from the same mother, or *vice versâ.*—1 *Bl.* 194.

HALF SEAL. A seal used in chancery for the sealing of commissions to delegates upon an appeal in civil, ecclesiastical, or marine causes.—8 *Eliz. c.* 3.

HALF-TONGUE. See tit. *Medietas Linguæ.*

HALL. See tit. *Aula.*

HALMOTE or HALIMOTE (from the Sax. *heale*, i. e. a court, and *gemot*, i. e. an assembly). The same as what is now commonly called a court baron.—*Leg. H.* 1, *c.* 10.

HALYMOTE. A holy or ecclesiastical court; and there was a court held in London by this name on Sunday next before St. Thomas's day, and was therefore called the *halymote* or holy court.—*Cowel.*

HALYWERCFOLK. Anciently signified those of the province of Durham who held their lands to defend the corpse of St. Cuthbert, and claimed the privilege not to be forced to go out of the bishoprick either by the king or bishop.—*Selden.*

HAMESECKEN. Burglary or nocturnal housebreaking was so called by our ancient law, as it is in Scotland to this day.—4 *Bl.* 224.

HAMFARE. This word by some is said to signify the freedom of a man's house; but Cowel seems to think that it signifies the breach of peace in a house.—*Cowel.*

HAMSOKEN. See tit. *Hamesecken.*

HANAPER OFFICE. An office connected with the Court of Chancery so called. Writs relating to the business of the subject, and the returns to them, were according to the simplicity of ancient times originally kept in a hamper, *in hanaperio;* and the others (relating to such matters wherein the crown is immediately or

mediately concerned) were preserved in a little sack or bag, *in parva baga*, whence has arisen the distinction of the *hanaper* office, and *petty bag* office, both of which belong to the Common Law Court in chancery.—3 *Bl.* 49.

HAND-BOROW. See tit. *Headborough.*

HANDGRITH (from the Sax. *hond*, hand, and *grith*, peace). Peace or protection given by the king with his own hand.—*Cowel; Leg. H.* 1, *c.* 13.

HAND-HABEND. A thief apprehended in the very act, having the stolen goods in his hands.—*Leg. H.* 1, *c.* 59.

HANDSALE. Anciently among all the northern nations shaking of hands was held necessary to bind the bargain, a custom which is still retained in some verbal contracts; such a sale was termed a hand-sale, until in process of time the same word was used to signify the price or earnest which was given immediately after the shaking of hands, or instead of it.—2 *Bl.* 448.

HANIG. A word signifying some customary labour to be performed.—*Mon. Angl.* 2 *tom.* 264.

HANGWIT or HANKWITE (from the Saxon *hangan*, i. e. to suspend, and *wite*, i. e. a fine). A liberty granted to a man, whereby he is quit of a felon or thief hanged without legal trial, or escaped out of custody. Cowel seems to think that it signifies a liberty whereby a lord challenges the forfeiture due from him who hangs himself within the lord's fee.—*Cowel.*

HANPER or HANAPER. See tit. *Hanaper Office.*

HANTELODE (from the German *hant*, i. e. a band, and *load*, i. e. laid). An arrest.—*Du Cange.*

HAP (from the Fr. *happer*, i. e. to snatch or catch). To snatch, to take, &c. It is thus used: If partition is made by two parceners, and more land is allowed to one than the other, and she who has most charges it to the other, and she haps the rent, whereupon assise is brought, &c. So also the phrase to *hap* the possession of a deed poll is made use of by Littleton.—*Cowel.*

HARO, HARRON. A hue and cry after felons and malefactors.—*Cowel.*

HAUR. In the laws of William the First seems to signify hatred.—*Leg. W.* 1, *c.* 16.

HAY-BOTE or HEDGEBOTE. An allowance of wood for repairing of hays, hedges, or fences.—2 *Bl.* 35. And see also tit. *Common.*

HAYWARD or HAWARD (from the Fr. *haie*, i. e. a hedge, and *garde*, i. e. custody, care). An officer sworn in the lord's court to look after the impounding of cattle; and he is so called because one part of his office is to see that they do not break or crop the hedges, fences, &c.—*Kitchin*, 46.

HEADBOROUGH or HEADBOROW. He was so called who was at the head of a frank-pledge in a decennary within a leet, or who had the government of those within his own pledge. He was called by the various names of *head-borough*, *borow-head*, *borough-holder*, *third-borough*, *tithing-man*, *chief-pledge*, and *borow-elder*, according to the local customs which prevailed. The *head-borough* was the chief of the ten pledges, the other nine were called *hand-boroughs* or

plegii manuales, i. e. inferior pledges. This officer is now commonly called a constable.—*Cowel; Les Termes de la Ley.*

HEAD-SILVER. See tit. *Common Fine.*

HEALSFANG or HALSFANG (from the Sax. *hals*, i. e. neck, and *fang*, i. e. to take by force, &c.) The punishment of the pillory. Sometimes it is taken for a pecuniary punishment or mulct to commute for standing in the pillory, to be paid to the king or chief lord. It is thus used: *Qui falsum testimonium dedit, reddat regi vel terræ domino* halfeng.—*Leg. H.* 1, *c.* 11.

HEARTH-MONEY. See titles *Chimney Money* and *Fuage.*

HEDGE-BOTE. See tit. *Haybote.*

HEIR (*hæres*). An heir may be termed the *real* representative of the ancestor; that is to say, the *heir* is the representative of the ancestor with respect to the real property of such ancestor. Blackstone defines an heir to be "him upon whom the law casts the estate immediately on the death of the ancestor." It is a rule in law, that *nemo est hæres viventis*, that no one can be the actual complete heir of an ancestor until such ancestor is dead; before that time the person who is next in the line of succession is either called an *heir apparent* or an *heir presumptive;* an

Heir Apparent is one whose right of inheritance is indefeasible provided he outlive the ancestor; as the eldest son or his issue, who by the course of the common law must be heir to the father whenever he happens to die; an

Heir Presumptive is one who, if the ancestor should die immediately, would in the present circumstances of things be his heir, but whose right of inheritance may be defeated by some nearer heir being born; as a brother, or nephew, whose presumptive succession may be destroyed by the birth of a child; or a daughter, whose present hopes may hereafter be cut off by the birth of a son.

Heir at Law, or heir-general, is he who after his ancestor's death, has a right to and is introduced into all his lands, tenements, and hereditaments.

Special Heir is the issue in tail, who claims *per formam doni.*

Heir by Custom is one who inherits lands, not according to the rules of the common law, but according to some particular custom which prevails in some places, as the custom of *gavelkind* in Kent, according to which *all* the sons inherit, and make but one heir to their ancestor; or the custom of *Borough English*, according to which the youngest son is the heir of the ancestor.

Heir by Devise, or *hæres factus*, is he to whom lands are devised by the will of the testator, and who has no other right or interest than that which he derives from the will. According to the Scotch law heirs are distinguished as follow:

Heir Active is he who is served heir and has the right of action.

Heir by Conquest is the successor of the deceased, in those lands and inheritable property in general to which the deceased did not succeed as heir to his predecessors; as in the case of a father leaving an estate which he had purchased to his second son.

Heir of Line is the lineal heir of his ancestor, and who succeeds by right of blood.

Heir Male is the nearest male heir capable of succeeding.

Heir Passive is he whom the law makes liable to be heir.

Heirs Portioners. Female succes-

sors, who are entitled to equal portions.

Heirs of Provision, or, as they are sometimes called, *heirs by destination*, are those who become successors by virtue of some particular provision in a deed or instrument.

Heir of Tailzie is he to whom an estate is entailed.

Heirs whatsomever, are heirs at law. 2 *Bl.* 208; 1 *Cruise*, 150, *sec.* 22; 2 *Prest. on Est.* 2; *Shep. Touchs.* 101; *Scotch Dict.*

HEIRESS. A female heir; and when there are several joint female heiresses, they are called *co-heirs* or *co-heiresses*.—*Cunningham.*

HEIR-LOOMS. Such inanimate personal chattels as go to the *heir* along with the inheritance, and not to the executor of the deceased. The term *loom*, in the Saxon language, signifies a limb or member, and hence *heir-looms* denote limbs or members of the inheritance. They are usually such things as cannot be taken away without damaging or dismembering the freehold, as chimney-pieces, pumps, and benches, &c. which have long been fixed. Various other kinds of personal chattels are also considered in the nature of heir-looms, as ancient portraits of former owners of the mansion, though not fastened to the walls, coat armour of an ancestor, &c.—*Toller's Exec.* 196, 197.

HENGWITE. See tit. *Hangwit.*

HERBAGE (*herbagium*). The fruit or produce of the earth by which cattle are sustained; but it is more frequently used to signify a liberty that a man has to feed his cattle in another man's ground, as in a forest, &c.—*Cromp. Juris.* 197.

HEREDITAMENTS (*hæreditamenta*). All things which may be *inherited* are *hereditaments*. This word is one of the most comprehensive that is used in deeds; for it includes not only lands and tenements, but also whatever may be inherited, be it corporeal or incorporeal, real, personal or mixed. Thus an heir-loom, or piece of furniture, which by custom descends to the heir, together with a house, is neither land nor tenement but a mere moveable, yet, being *inheritable*, it is comprised under the general word *hereditament*. So also a condition, the benefit of which may descend to a person from his ancestor, is a *hereditament*. *Hereditaments* are of two kinds, *corporeal* and *incorporeal*. *Corporeal* are such as are of a material and tangible nature, and may be perceived by the senses, and consist of substantial and permanent objects, such as houses, meadows, pastures, waters, woods, castles, and other buildings, all of which may be comprehended under the general denomination of *land*. *Incorporeal hereditaments* are not of a material nature, and therefore not the object of the senses, but are of an abstract nature and the objects of contemplation, and are said to be *rights* issuing out of something corporeal (whether real or personal), or concerning it, or annexed to it, or exercisable within such corporeal thing. An *incorporeal hereditament* is not the corporeal thing itself, which, as has been before observed, may consist of lands, houses, jewels, &c., but it is something collateral or incident to it; as for example, a rent issuing out of lands or houses, an *office* relating to those jewels, and such like. *Corporeal hereditaments* then are the substance, which may be seen and felt: *incorporeal hereditaments* are the accidents which reside in the substance, and indeed depend upon it for their existence. For the reader to form a clear idea of an *incorporeal hereditament*, he should be careful not to confound together the profits pro-

duced, and the thing or hereditament which produces them. Thus an annuity is an *incorporeal hereditament;* for though the money, which is the fruit or produce of this annuity, is of a corporeal nature, yet the annuity itself, which produces that money, is of an incorporeal nature, being neither visible nor tangible, but existing only as an object of the mind. Tithes also (which are incorporeal hereditaments) when considered as the tenth sheep or tenth lamb, appear quite of a corporeal nature; but the truth is that an *incorporeal hereditament* is rather the right to a thing, than the thing itself: so that, when it is said above that annuities and tithes are *incorporeal hereditaments*, the reader must understand by the word annuity, the *right* to receive an annual sum; and by the word tithe, the *right* to receive a tenth of the produce, &c., for if otherwise understood, it would of course involve a contradiction of terms. The principal sorts of hereditaments, as enumerated by Blackstone, are as follow, viz. advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities and rents. Of the various sorts of *incorporeal hereditaments* none will perhaps more clearly illustrate their nature, than the instance of an advowson or the right of presentation to a church or ecclesiastical benefice. It is not itself the bodily possession of the church and its appendages; but it is a right to give some other man a title to such bodily possession. The advowson is neither the object of sight, nor touch, and yet it perpetually exists in the mind's eye, and in contemplation of law; and on the other hand, the church and its appendages are not the advowson, but are merely the objects to which the patron has the *right* of presenting some one.—2 *Bl.* 17 *to* 21; 1 *Cruise*, 53, 54; *Burn, E. L.*

HERESY (*hæresis*). A false opinion repugnant to some point of doctrine clearly revealed in Scripture, and either absolutely essential to the Christian faith, or, at least, of the highest importance. — 1 *Hawkins, P. C. c.* 2.

HERIOT (*heriotum*). The best beast (whether a horse, ox, or cow) which by the custom of some manors is due to the lord upon the death of his copyhold tenant. *Heriots* are usually divided into two sorts, heriot-*service* and heriot-*custom:* the former are such as are due upon a special reservation in a grant or lease of lands, and therefore amount to little more than a mere rent: the latter arise upon no special reservation whatever, but depend merely upon immemorial usage and custom. In some manors it is the best *chattel*, under which term a jewel or piece of plate is included; but it is always a personal chattel, which immediately on the death of the tenant, being ascertained by the option of the lord, becomes vested in him as his property, and is no charge on the lands, but merely on the goods and chattels of the tenant. — 1 *Cruise*, 323; *Bro. Abr.;* 2 *Bl.* 422.

HERITABLE and MOVEABLE RIGHTS. In the Scotch law, in order to make a distinction between the rights of the executor and the heir, things are considered as either *heritable* or *moveable:* thus all rights to land, or whatever may be intimately connected with land, as mills, fishing, tithes, &c., and such like, are considered as *heritable;* and all such things as can either move themselves, or be moved, and are not intimately connected with land, are considered as moveable.—*Scotch Law Dict.*

HERITABLE BOND. In Scotland a bond is so called when joined with

a conveyance of land or *heritage* to be held by the creditor as a security for his debt.—*Jacob.*

HERITABLE JURISDICTIONS. Criminal jurisdictions which were formerly bestowed on great families in Scotland, to facilitate the administration of justice; these were in effect abolished by the 20 Geo. 2, c. 50.—*Tomlins.*

HERSHIP. In the Scotch law the illegally driving of cattle from the grounds of the proprietors.—*Scotch Dict.*

HEYBOTE. See tit. *Haybote.*

HIDAGE (*hidagium*). By some it is said to signify an extraordinary tax payable to the king upon every hide of land: others say it signifies to be quit of that tax.—*Les Termes de la Ley.*

HIDEGELD. See tit. *Hudegeld.*

HIGH COMMISSION COURT. This was a court of ecclesiastical jurisdiction erected and united to the regal power by virtue of the statute 1 Eliz. c. 1, instead of a larger jurisdiction which had before been exercised under the pope's authority. It was intended to vindicate the dignity and peace of the church, by reforming, ordering and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. This court was abolished by statute 16 Car. 1, c. 11.—3 *Bl.* 67.

HIGH CONSTABLE. See tit. *Constable.*

HIGH TREASON. See tit. *Treason.*

HIGHWAY. Is a passage open to all the king's subjects. It seems doubtful whether it must have originally been a thoroughfare. It may be a footway, or a *pack* or *prime* way, (which is both a horse and footway), or a cartway; for "highway is the genus of all public ways, as well cart and horse as footways."—*Per Lord Holt*, 6 *Mod.* 255; 2 *Smith, L. C.* 94.

HIIS TESTIBUS (*these being witnesses*). Words which were formerly used in deeds, and followed the words *in cujus rei testimonium*: they have been disused since Hen. VIII. in the deeds of subjects. — *Co. Litt.* 6; *Cowel.*

HOLDING OVER. *Holding* or remaining in possession of premises, after the term for which the tenant is entitled to hold them has determined or expired. Thus, if I take the lease of a house for seven years, and after that seven years has expired I still remain in possession of the premises, I am said to *hold over*, i. e. I *hold* the premises *over* and above the term that I am entitled to hold them.—2 *Bl.* 151.

HOLDING PLEAS. Entertaining or taking cognizance of actions.

HOMAGE (*homagium*). Was a ceremony which the feudal tenants had to perform at the time of investure, on receiving a grant of lands from their lord. It was performed in the following manner: the vassal being uncovered and ungirt, knelt down before his lord, and putting his hand between those of his lord, said, *devenio homo vester, de tenemento quod de vobis teneo, et tenere debeo, et fidem vobis portabo contra omnes gentes*; the lord then embraced the tenant, which completed the homage. Fealty and

homage have been often confounded by the feudal writers, but improperly; for fealty was a solemn oath of fidelity made by the vassal to the lord, whereas homage was merely an acknowledgment of tenure. When a man and his ancestors had immemorially holden land of another and his ancestors, by the service of homage, this was called *homage ancestral*. When sovereign princes did homage to each other for lands held under their respective sovereignties, a distinction was always made between *simple homage*, which was only an acknowledgment of tenure, and *liege homage*, which included the fealty before mentioned, and the services consequent upon it.

Homage of a court baron is a jury of persons who, on a party's admission to a copyhold estate, inquire into all matters respecting the same, which come to their knowledge or are given them in charge, and make presentment thereof; which presentment is an information to the lord or his steward of what has been transacted out of court: this kind of jury is sometimes termed the *homage jury*.—2 *Bl.* 300, 366; *Watkins on Copyholds.*

HOMAGER. He who does or is bound to do homage to another person.—*Cowel.*

HOMAGIO RESPECTUANDO. A writ directed to the escheator, commanding him to deliver seisin of lands to the heir who is of full age, notwithstanding his homage has not been made.—*Les Termes de la Ley.*

HOMICIDE (*homicidium*). Is the killing of any human creature. Blackstone enumerates three kinds of homicide, viz. *justifiable*, *excusable*, and *felonious*. Justifiable homicide is of various kinds. 1. Such as is owing to some unavoidable necessity, without any will, intention, or desire, and without any inadvertence or negligence in the party killing; as for instance, by virtue of such an office as obliges one, in the execution of public justice, to put a malefactor to death, who had forfeited his life by the laws and verdict of his country; this being an act of necessity, and even of civil duty, is considered by the law as *justifiable*. In order however to constitute it *justifiable*, the law must *require* the taking away of life; for wantonly to kill the greatest of malefactors, deliberately, uncompelled and extrajudicially, is murder. In some cases *homicide* is *justifiable* rather by the *permission* than by the absolute *command* of the law, either for the advancement of public justice, which without such indemnification would never be carried on with proper vigour; or in such instances where it is committed for the *prevention* of some atrocious crime, which cannot otherwise be avoided; as when an officer in the execution of his office, either in a civil or criminal case, kills a person that assaults and resists him; or when a person attempts a robbery or murder of another, or attempts to break open a house in the night time, and shall be killed in such attempt. Numberless cases might be given of *justifiable homicide*, but as sufficient examples have already been given, it would be occupying the attention of the reader uselessly to give more; suffice it to say, that any killing which is *justified* or permitted by the law, comes within the meaning of *justifiable homicide*. *Excusable homicide* is of two sorts, either *per infortunium*, by misadventure, or *se defendendo*, upon a principle of self-preservation. Homicide *per infortunium*, or *misadventure*, is when a man in doing a lawful act, without any intention of hurt, unfortunately kills another; as when a man is at work with a hatchet, and the head flies off and kills a by-

stander; or when a person qualified to keep a gun is shooting at a mark, and in so doing undesignedly kills a man, &c. *Homicide in self-defence*, or *se defendendo*, upon a sudden affray, is when a man in protecting himself from an assault or the like, in the course of a sudden broil or quarrel, kills him who assaults him, &c. *Felonious homicide* is the killing of a human creature of any age or sex, without justification or excuse, which may be done either by killing one's self, or another man. *Felonious homicide*, as applied to the killing of another man, is also divided into *manslaughter* and *murder*, both of which will be found under their respective titles. — 4 *Bl.* 176; *Hale, P. C.* 473; 1 *Hawk. P. C.* 73.

HOMINE CAPTO IN WITHERNAMIUM. A writ to take him who had taken any bondman or woman, and led him or her out of the country, so that he or she could not be replevied according to law. — *Reg. Orig.*; *Les Termes de la Ley.*

HOMINE ELIGENDO AD CUSTODIENDAM PECIAM SIGILLI PRO MERCATORIBUS EDITI. A writ which was directed to a corporation for the choice of a new officer to keep one part of the seal appointed for statutes merchant, when the other was dead, according to the statute of *Acton Burnel.*—*Reg. of Writs*, 178; *Cowel.*

HOMINE REPLEGIANDO. The writ *de homine replegiando* lay to replevy a man out of prison, or out of the custody of any private person (in the same manner that chattels taken in distress may be replevied), upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him.—3 *Bl.* 129.

HONORARY FEUDS. Titles of nobility which were not of a devisable nature, but could only be inherited by the eldest son in exclusion of the rest.—2 *Bl.* 56; *Wright's Ten.* 32.

HONORARY SERVICES. Were those services that were incident to the tenure of *grand-serjeanty*, and were usually annexed to some honor. —*Cowel.*

HONOUR. The seignory of a lord paramount. In the early times of our legal constitution, the king's greater barons, who had a large extent of territory held under the crown, frequently granted out smaller manors to inferior persons to be holden of themselves, and which now continue to be held under a superior lord, who is called in such cases the lord paramount over all these manors; and his seignory is frequently termed an *honour*, not a manor, especially if it has ever belonged to an ancient feodal baron, or has at any time been in the hands of the crown. —2 *Bl.* 91.

HONOUR, *Court of.* See tit. *Court of Chivalry.*

HORS DE SON FEE (*out of his fee*). An exception to avoid an action brought for rent issuing out of certain land by him who pretends to be the lord; or for some customs or services; for if the defendant can prove the land to be *out of the compass of his fee*, the action fails.—*Les Termes de la Ley.*

HOTCHPOT (from the French *hochepot*, i. e. *hodgepodge*, or mingling of things together). A blending or mixing together. For example, supposing a man, seised in fee of fifty acres of land, has two daughters, and gives with one of those daughters twenty acres in marriage; in this case, if the remaining thirty acres descend from the same ancestor to her and her sister in fee simple, she

or her heirs shall have no share in them, unless they will agree to *mingle together* the twenty acres she had received in marriage with the thirty acres so descended, and this mingling together the twenty acres with the thirty is termed bringing it into *hotchpot*, so that an equal division may be made of the whole between her and her sister; so that in this case, by her bringing her twenty acres into hotchpot, she would on division receive twenty-five. The bringing of her lands into hotchpot would however be left to her choice, and if she did not choose to do so, she would be considered sufficiently provided for, and the rest of the inheritance would be given to her sister. This method of division is also pursued in the distribution of personal property. —2 *Bl.* 191; *Les Termes de la Ley.*

HOUSEBOLD and HAYBOLD. See tit. *Housebote* and *Haybote.*

HOUSEBOTE (from the Sax. *house* and *bote*, i. e. compensation). Necessary wood or timber that a lessee for years or for life is entitled to take off the ground let to him, for the purpose of repairing the houses, &c. standing upon the same ground.—*Les Termes de la Ley.* See also tit. *Common* in this Dictionary.

HUDEGELD. The price of exemption from chastisement paid by a villein or servant who had committed any trespass which incurred corporeal punishment.—*Fleta.*

HUE AND CRY (*hutesium et clamor*; from the French words *huer* and *crier*, signifying to shout). The old common law process of pursuing with horn and voice all felons, and others, who had dangerously wounded another.—*Bract. l.* 3, *tr.* 2, *c.* 1, *sec.* 1.

HUIFFIER. See tit. *Usher.*

HUNDRED COURT. A hundred court is much the same as a court baron, only that it is larger, and is held for the inhabitants of a particular hundred, instead of a manor: it resembles a court baron in not being a court of record, and in the free suitors being the judges, and the steward the registrar.—3 *Bl.* 34.

HUNDREDORS (*hundredarii*). Persons empaneled or fit to be empaneled on a jury, upon a controversy arising within the hundred where the land in question lies. It also sometimes signifies he who has the jurisdiction of a hundred, and holds the hundred court; and sometimes it is used for the bailiff of a hundred.—*Cromp. Juris.* 217.

HUNDREDUM. Sometimes means to be free or quit from money or customs due to governors and *hundredors.* —*Les Termes de la Ley.*

HUSTINGS. See tit. *Court of Hustings.*

HUTESIUM ET CLAMOR. See tit. *Hue and Cry.*

HYDAGE. See tit. *Hidage.*

HYPOTHECA (Lat. *a pledge*). In the civil law when the possession of the thing pledged remained in the hands of the debtor, it was termed *hypotheca.* To *hypothecate* a ship signifies to pawn the same for necessaries; which a master of a ship may do for relief, when in distress at sea, for he represents the traders as well as the owners; and when a ship is so hypothecated, into whose hands soever it may afterwards come, they are liable.—2 *Bl.* 159; 1 *Salk.* 34.

I.

IDENTITATE NOMINIS. A writ that lay for him who was taken upon a capias or exigent, and committed to prison, in mistake for another man of the same name; and it is directed to the sheriff, being in the nature of a commission to inquire whether or not he is the same person against whom the action was brought, and if not, then he was to be discharged.—*F. N. B.* 267.

IDENTITY OF PERSON. See tit. *Collateral Issue.*

IDEOTA INQUIRENDO VEL EXAMINANDO. A writ directed to the sheriff, commanding him to call before him the party suspected of idiotcy, and to examine him by the oath of twelve men whether he is sufficiently sane to dispose of his own lands.—17 *Edw.* 2, *c.* 9; *Les Termes de la Ley.*

IGNIS JUDICIUM. Purgation by fire. See tit. *Ordeal.*

IGNORAMUS (*we are ignorant*). Formerly the grand jury used to write this word on bills of indictment, when, after having heard the evidence, they thought the accusation against the prisoner was groundless; intimating that, though the facts might possibly be true, the truth did not appear to them; but now they usually write in English the words "not a true bill," or "not found," whereupon the party is forthwith discharged; and the jury in so doing are said to *ignore* the bill.—4 *Bl.* 305.

IGNORE, *To.* To be ignorant of. Used with reference to the opinion of the grand jury on a bill of indictment, and signifies their rejection of it.—See tit. *Ignoramus.*

ILLEVIABLE. That cannot be levied. It is applied to a debt or duty that either cannot or ought not to be levied.—*Cowel.*

IMBRACERY. See tit. *Embracery.*

IMPANEL (*impanulare juratis*). To *impanel* a jury, signifies the entering the jurors' names upon a little oblong piece of parchment termed a *panel*, who have been summoned to appear in court on a certain day to form a jury of the country, to hear such matters as are brought before them.—*Smith's Action at Law.*

IMPARLANCE. An indulgence formerly granted to a defendant to defer pleading to the action until a subsequent term. It is said that the reason of allowing an *imparlance* was to give the plaintiff an opportunity of settling the matter amicably with the defendant, without further prosecuting his suit; a practice which, it is said, Gilbert, C. B., supposed originated from a religious principle founded on the text of Scripture, "agree with thine adversary quickly, whilst thou art in the way with him."—*Mat. ch. 5, ver.* 25. Since the 2 Will. 4, c. 39, in actions commenced by the process prescribed by that act, these imparlances are abolished.—1 *Arch. Pr.* 301; *Boote's Suit at Law*, 156.

IMPARL, *To.* To postpone the delivery of his plea by a defendant in an action until another term. See tit. *Imparlance.*

IMPARSONEE. He who is inducted and in possession of a benefice: thus it is said that a dean and chapter are parsons imparsonees of a benefice appropriate unto them.—*Cowel.*

IMPEACHMENT. Is the exercise of the highest judicial powers of par-

liament, but which is now rarely resorted to. "In impeachments the commons, as the great representative inquest of the nation, first find the crime, and then, as prosecutors, support their charge before the lords; while the lords, exercising at once the functions of a high court of justice and of a jury, try and adjudicate the charge preferred."—*May's Law, and Priv. &c. of Parliament.*

IMPEACHMENT OF WASTE (*impetitio vasti*). The liability of being impeached for *waste* committed on any lands or tenements. All tenants for life or for years are punishable or liable to be impeached for waste, both voluntary and permissive; unless their leases be made *without impeachment of waste, absque impetitione vasti*; i. e. with a provision or protection, that he shall not be sued for committing waste. As to what is *waste*, see that title.

IMPERTINENCE. See *Scandal.*

IMPLEAD, *To.* To sue or bring an action. Thus he, against whom an action was brought, was in the language of old law writers said to be *impleaded.*

IMPLICATION. This word has almost acquired a technical character from the manner in which law writers have used it. It signifies something *implied* in law, though not formally expressed in words.—2 *Bl.* 381.

IMPLIED COLOUR. See tit. *Colour.*

IMPOUND, *To.* The placing cattle, goods or chattels taken under a distress in a lawful pound; and a lawful pound is of two sorts, open and close. An *open* pound is any place in which the putting the cattle does not make the owner a trespasser, and where he may give them to eat and drink without trespass. Such is the common public pound incident to most parishes. A pound *close* is some private place selected by the impounder, where the owner has no right to enter to them. If cattle be put into a ponnd *close*, the impounder shall sustain them without any allowance for it; but if put into an *open* pound, they must be sustained at the peril of the owner.—*Co. Litt.* 47 *b*; *Com. Dig. tit. Distress* (*D.* 1); *per Burrough J. in Browne* v. *Powell*, 4 *Bing.* 238.

IMPOUNDER. See tit. *Impound.*

IMPROPER FEUDS. See tit. *Feod.*

IMPROPRIATE RECTOR. Commonly signifies a lay rector. See tit. *Impropriation.*

IMPROPRIATION. An *impropriation* signifies a benefice in the hands of a lay person, or lay corporation. An *impropriation* is nearly the same as an *appropriation*, the nature of which term may perhaps be best discovered by giving attention to the following passage from Blackstone. "A parson has during his life the freehold in himself of the parsonage house, the glebe, the tithes, and other dues. But these are sometimes *appropriated*; that is to say, the benefice is perpetually annexed to some spiritual corporation, either sole or aggregate, being the patron of the living, which the law esteems equally capable of providing for the service of the church, as any single private gentleman. This contrivance seems to have sprung from the policy of the monastic orders, who have never been deficient in subtle inventions for the increase of their own power and emolument. At the first establishment of parochial clergy the tithes of the parish were distributed in a fourfold division; one for the use of the bishop; another for maintaining the fabric of the church; a third, to the poor; and the fourth, to

provide for the incumbent. When the sees of the bishops became otherwise amply endowed, they were prohibited from demanding their usual share of these tithes, and the division was into three parts only. And hence it was inferred by the monasteries that a small part was sufficient for the officiating priest, and that the remainder might well be applied to the use of their own fraternities (the endowment of which was construed to be a work of the most exalted piety), subject to the burthen of repairing the church, and providing for its constant supply: and therefore they begged and bought for masses, and obits, and sometimes even for money, all the advowsons within their reach, and then *appropriated* the benefices to the use of their own corporation."—1 *Bl.* 384.

IMPROVEMENT. See tit. *Approvement.*

IN ACTION. Property *in action* is where a man has not the enjoyment, actual or constructive, of the thing in question, but merely a right to recover it by a suit or action at law; from whence the thing so recoverable is called a thing or *chose in action*; of which nature is money due on a bond, the property in which vests whenever it becomes payable; but there is no possession till recovered by course of law, or voluntarily paid. Such choses in action cannot be assigned.—2 *Stephen, Bl.* 74; and see tit. *Chose in Action.*

IN AUTER DROIT. In another's right. Thus, when an executor or administrator sues a person for a debt due to the testator or the intestate, he is said to do so *in auter droit*, that is, *in the right of another*, viz. in the right of the testator or intestate.—2 *Bl.* 177.

IN CASU CONSIMILI. See tit. *Casu consimili.*

IN CASU PROVISO. See *Entry in Casu proviso*, under tit. *Entry, Writ of.*

IN PERSONAM. Against or upon a *person*, as distinguished from *in rem*, against or upon a thing. An illustration of the distinction existing between these two phrases is frequently furnished by the revenue cases which are peculiarly within the jurisdiction of the Court of Exchequer; thus the condemnation of the smuggled *goods* to the use of the crown is a proceeding *in rem*; whilst the conviction of the *person* committing the illegality, though by the same court and concerning the same transaction, is a proceeding *in personam*. A judgment *in rem* is an adjudication pronounced upon the status of some particular subject matter; as for instance, the sentence of the Court of Admiralty condemning a vessel or prize; or of an ecclesiastical court establishing or nullifying a marriage; which latter case, although clearly affecting the personal position of the parties, is yet included in the class of judgments *in rem*, for it decides the permanent *status* of those concerning whose condition the suit was instituted.

IN REM. See tit. *In Personam.*

IN THE CAUSE, *Costs.* All such costs as are necessarily incurred by the plaintiff in prosecuting, and by the defendant in defending the action, are commonly called "costs in the cause;" and such costs the successful party is entitled to be paid as incidental to the claim on which he succeeds. It is said that these costs are awarded as a compensation to the suitor for what he has paid, or has become liable to pay, to his attorney in and about the prosecuting or the defending the action. — *Lush's Pr.* 775; See *Pugh* v. *Kerr*, 6 *Mee. & W.* 20; 14 *Mee. & W.* 153, 248. See

also tit. *Party and Party* in this Dictionary.

INCIDENT. Inseparably belonging to, connected with, or inherent in. Thus a court baron is *incident* to a manor, and so inseparably, that it cannot be severed by grant; for a court is an essential ingredient in the existence of a manor, without which it would cease to be a manor. Again, rent is said to be *incident* to a reversion; i. e. that it is one of the inseparable qualities, or one of the necessary characteristics, of a reversion. —*Les Termes de la Ley*.

INCIPITUR (from the Lat. *incipio*, to begin). The beginning or commencement of pleadings, or sometimes of other proceedings. The practical phrase of *entering the incipitur on the roll* may be thus explained. When the contending parties in an action have come to an issue, the plaintiff in strictness should enter the same, together with all the pleadings prior thereto, on a roll of parchment called the *issue roll*; but this is now seldom done, *the commencement of the pleadings* only being entered thereon, which is termed *entering the incipitur* (i. e. the beginning) *on the roll*.—1 *Arch. Pract.* 350; *Tidd's Practice*. The entry even of the *incipitur* is now however, by a recent rule of court, rendered unnecessary. See 1 *Pl. R. H. T.* 4 Will. 4. See also tit. *Issue Roll*.

INCORPOREAL HEREDITAMENTS. See tit. *Hereditaments*.

INCREASE, *Affidavit of*. See tit. *Extra Costs*.

INCREASE, *Costs of*. In strictness it is within the province of the jury upon the trial to assess or ascertain the amount of and to award the costs of the action to the successful party; but as the courts have power *ex officio* to assess the damages as against the defendant, it has become the practice for the jury to award to the successful party the nominal sum of 40*s*. only, and for the court to assess by their own officer the actual amount; and the amount so assessed, over and above the nominal sum awarded by the jury, is thence called "*costs of increase*."—*Lush's Pr.* 775.

INCUMBENT (from *incumbere*, signifying as well to possess and keep safely, as to endeavour earnestly, *obnixè operam dare*). Is a clerk duly possessed of or *resident* on his benefice with cure. It is said there are four things necessary to the being a complete incumbent. 1st. Presentation. That is, the patron's free gift or commendation of his clerk to the parsonage or vicarage, by presenting or offering him to the bishop. —*Degge*, 5; *Godol. Abr.* 317, cited in *Rog. Ecc. Law*. 2dly. Admission of such clerk by the bishop by his allowance or approbation of him after due examination, and by making a record of his name accordingly. 3dly. Institution of such clerk to such benefice by the bishop on collation. 4thly. Induction, whereby the clerk takes actual possession of the benefice, by taking the keys of the church door, by the ringing a bell, or the like.—*Rog. Ecc. Law*, 453, 454.

INCUMBER, *To*. A person is said to *incumber* his estate, when he renders it liable to burdens or debts. Thus, he who mortgages an estate is said to *incumber* it; the estate, when so burdened, is said to be *incumbered*; and the burden or debt itself with which the estate is charged is termed an *incumbrance*.

INCUMBRANCES. See tit. *Incumber*.

INDEBITATUS ASSUMPSIT. That species of the action of *assumpsit* in which the plaintiff first *alleges a debt*, and then a *promise* in consideration

of the debt: such *promise* however is usually not an *express* but an *implied* one, for the law always *implies* a promise to do that which the party is legally liable to perform.—*Stephen on Pleading*, 19, 45. See also tit. *Assumpsit*.

INDEMNITY, *Acts of*. Acts of indemnity are such as are passed for the relief of those who have neglected to take the necessary oaths, or to perform other acts required to qualify them for their offices and employments. So acts of indemnity, after rebellions, have been passed, for quieting the minds of the people, and throwing former offences into oblivion.

INDENTURE (*indentura*). Deeds or writings which are cut or *indented* at the top or side, are called *indentures*. They formerly used to cut them in acute angles *instar dentium*, like the teeth of a saw, but now they are usually cut in a waiving line on the top. Formerly when deeds were more concise than at present, it was usual to write both parts on the same piece of parchment, with some word or letters of the alphabet written between them; through which the parchment was cut, either in a straight or indented line, in such a manner as to leave half the word on one part and half on the other; but at length indenting only has come into use, without cutting through any letters at all; and it seems at present to serve for little other purpose than to give name to the *species* of the *deed*. 2 *Bl.* 295.

INDENTURES OF FINE. See tit. *Fine*.

INDICAVIT. A writ or prohibition that lies for a patron of a church whose clerk is sued in a spiritual court by another clerk, for tithes amounting to a fourth part of the value of the living; for in this case an ecclesiastical court has no cognizance, but the party must seek redress in the temporal courts.—3 *Bl.* 91.

INDICTEE. He against whom an indictment has been laid.—See tit. *Indictment*.

INDICTMENT (*indictamentum*). An indictment is a written accusation of one or more persons of a crime or misdemeanor, preferred to and presented upon oath by a grand jury. Strictly speaking such a written accusation is not called an *indictment* until the grand jury has heard the evidence against the accused, and pronounced the accusation to be well grounded, or, in law phraseology, has found "*a true bill*:" and in this case the *indictment* is said *to be found*, and the party is said to stand *indicted*. The person who *indicts* another man of an offence is sometimes termed the *indictor*, and he who is indicted, the *indictee*.—4 *Bl.* 302; *Hawk. P. C.*

INDORSEMENT (*indorsamentum*). Any writing on the *back* of a deed or other instrument is an *indorsement*: thus the receipt for consideration money on the *back* of a deed is an *indorsement*; so is the attestation clause when written on the *back* of a deed. So also in the negociating bills of exchange, he who writes his name on the *back* of the bill is termed the *indorser*, and he in whose favour it is indorsed, the *indorsee*.—2 *Bl.* 468; *West's Symb. par.* 2, *sec.* 157.

INDORSEMENT OF PARLIAMENTARY BILLS. Is the official record of the assent of one house to the bills passed in the other, and is expressed on the *back* of the bill in old Norman French.

INDUCEMENT. That portion of a declaration or of any subsequent pleading in an action, which is

brought forward by way of explanatory introduction to the main allegations. It is somewhat analogous to the preamble in an act of parliament, or to the recitals in a deed, and, like them, commonly commences with the word "*whereas.*" Thus in a declaration for libel, all that introductory part which states "that whereas the plaintiff was a good, true, honest, just and faithful subject of the realm, and as such, had always behaved and conducted himself, &c. &c." is the *inducement*, and the matter thus brought forward, is thence termed "*matter of inducement*;" and, in general, not being a material or essential part of the pleading, cannot be traversed. See 1 *Ch. Pl.* 290, *edit. 6th.*; 2 *Ib.* 424; *Steph. Pl.* 270; *edit. 4th.*

INDUCEMENT, *Matter of.* Is matter brought forward only by way of explanatory introduction to the main allegations of the declaration or plea, &c. See tit. *Inducement.*

INDUCTION (*inductio*, i. e. leading into). The giving the clerk or parson corporal possession of the church; and it is generally done by holding the ring of the door, tolling the bell, or some such form. The intention of it is, that the parishioners may have due notice and sufficient certainty of their new minister, to whom their tithes are to be paid. This, therefore, is the investiture of the *temporal* part of the benefice, as institution is of the *spiritual.*—1 *Bl.* 391; *Co. Litt.* 300.

IN-DWELLERS. See tit. *Out-dwellers and In-dwellers.*

IN ESSE. In being; in existence. Law writers frequently make a distinction between things which are *in esse*, and those which are *in posse*, or *in potentia*; the one signifying something in existence at the present instant; the other signifying something that may *possibly* be so at some future time.—*Co. Litt.*

INFANGTHEF or INFANGENETHEOF. A privilege or liberty granted to lords of certain manors to judge any thief taken *within* their fee: in the same sense that *outfangthief* signified a privilege by which the lord was entitled to call any man resident within his manor, and taken for felony *out* of his fee, to judgment in his own court.—*Les Termes de la Ley.*

INFANT. He who has not attained the age of legal capacity; which age is in general fixed at twenty-one years. For certain purposes, however, it arrives much earlier. Thus, in criminal cases, a person of the age of fourteen years may be capitally punished, but under the age of seven he cannot. The intermediate period between seven and fourteen is subject to much uncertainty, for the infant shall be judged primâ facie innocent, yet if he was *doli capax* and could discern between good and evil, he may be convicted and undergo execution of death, though he hath not attained the years of puberty or discretion. A male at twelve years old may take the oath of allegiance; at fourteen is so far at years of discretion that he may enter into a binding marriage; and at twenty-one, he is at his own disposal, may aliene his land, and generally perform all the duties and enjoy all the privileges attaching to a citizen. A female also is at maturity at twelve years, and therefore may enter into a binding marriage, and at twenty-one may dispose of herself and all her property. This full age of twenty-one is completed on the day preceding the anniversary of a person's birth. And as in the computation of time, the law in general allows no fraction of a day, it follows that if he is born on the 1st of January he is of an age

to do any legal act on the morning of the last day of December, though he may not have lived twenty-one years by nearly forty-eight hours.—2 *Stephen's Bl.* 331, 332.

INFEODATION OF TITHES. The granting of tithes to mere laymen; which was prohibited by a decree of the council of Lateran, A.D. 1179.—*Decretal, l.* 3, *t.* 30, *c.* 19; 2 *Bl.* 27.

INFERIOR COURTS. Our courts of judicature are classed generally under two heads or divisions, viz. the *superior* courts, and the *inferior* courts; the former division comprising the courts at Westminster; the latter comprising all the other courts in general; many of which however are far from being of inferior importance in the common acceptation of the word. Those courts which are generally understood by the phrase "the superior courts at Westminster" are the King's Bench, Common Pleas, and Exchequer.—*Tidd's Practice.*

IN FORMA PAUPERIS. See tit. *Forma Pauperis.*

INFORMATION (*informatio*). Informations are accusations for criminal offences, and he who makes such accusations is termed an *informer*; and are 1st, In the name of the king only, and these are filed in the Court of King's Bench for the punishment of offences affecting the safety of the crown, or the interests of the public; and when affecting the king, his ministers, or the state, are filed *ex officio*, by his immediate officer, the Attorney-general; when more particularly asserting individual rights, they are then filed by the king's coroner, or master of the crown office. 2d, In the name of a king and a subject, or in the name of a subject only. These latter are commonly called informations *qui tam*, from those words in the information when the proceedings were in Latin, *qui tam pro domino rege quam pro se ipso, &c.* and these are usually brought before justices of the peace, upon penal statutes, which inflict a penalty upon conviction of the offender, one part to the king, and the other to the informer, or to the informer and the poor of the parish, or to the informer only. The usual objects of informations *ex officio* are such misdemeanors as peculiarly tend to disturb or endanger the king's government, or to molest or affront him in the regular discharge of his royal functions; as seditious or blasphemous libels or words; seditious riots, not amounting to high treason; libels upon the king's ministers, the judges, or other high officers, reflecting upon their conduct in the execution of their official duties; obstructing such officers in the execution of their duties; obstructing the king's officers in the collection, &c. of the revenue; against officers themselves, for bribery, or for other corrupt or oppressive conduct, and the like.—4 *Bl.* 308; *Archb. Crim. Law*, 39.

INFORMER. See tit. *Information.*

INGRESSU. A writ of entry, by which a man seeks entry into lands or tenements: of which there are various forms according to the nature of the case.—*Reg. Orig.* 227.

INGRESSUS. See tit. *Relief.*

IN GROSS. At large; independent of; not annexed to, or dependent upon anything. See tit. *Advowson.*

INGROSSER (from the Fr. *grosier*, i. e. one who sells by wholesale). In the English law an ingrosser signifies one who buys corn, grain, butter, cheese, or other commodities, with the intention of selling the same

again. Sometimes this word is applied to a clerk who writes on paper or parchment, which is termed *ingrossing*.—*Les Termes de la Ley.*

INGROSSING. See tit. *Ingrosser*.

INHERITANCE (*hæreditas*). Such an estate in lands or tenements, or other things, that may be *inherited* by the heir; and it is divided into *inheritance corporate*, and *inheritance incorporate*; the former consisting of messuages, lands, and other substantial or corporeal things; the latter consisting of advowsons, ways, commons, and such like, that are or may be appendant or appurtenant to inheritances corporate.—*Les Termes de la Ley.*

INHIBITION (*inhibitio*). A writ to *inhibit* or forbid a judge from proceeding further in the cause depending before him. There is also another writ of this kind, being one which issues forth from a higher ecclesiastical court to an inferior one upon an appeal.—*Cowel.*

INITIATE, *Tenant by Courtesy*. In the feodal law, as soon as a woman seised of lands had issue by her husband, the father of such issue began to have a permanent interest in the lands; he became one of the *pares curtis*, did homage to the lord, and was called tenant by the curtesy *initiate*.—2 *Bl.* 127.

INJUNCTION (*injunctio*). An *injunction* is a prohibitory writ, granted by a court of equity against one or more parties to a suit, forbidding certain acts to be done. The usual objects of such a prohibitory writ are to stay proceedings at law, to restrain a defendant in ejectment from setting up an outstanding term as a defence to the action; or a plaintiff from availing himself of a *legal* title against the defendant, when the latter has an *equitable* title; to restrain the defendant from pirating the plaintiff's copyright, or infringing his patent; from committing waste, by felling timber, ploughing meadows or ancient pasture, or pulling down buildings, or from obstructing ancient lights, or the like; and generally when any act is threatened or evidently in contemplation, or in the course of commission, the consequences of which would be an irreparable injury to the plaintiff's property, and for which the ordinary courts of law could afford him no adequate redress, the Court of Chancery will grant an injunction to restrain the commission of it. *Injunctions* are either *common* or *special*. A *common* injunction is that process which issues to restrain proceedings in a court of law, when a party by fraud or accident, or otherwise, may have an advantage in proceeding in those courts which must necessarily make them instruments of injustice; and thus, a court of equity, by granting an injunction, prevents such ill consequences. A *special* injunction is that process which is granted upon *special* or urgent occasions; as when an extensive injury is about to be inflicted upon the property of another, as by felling timber, pulling down buildings, and the like.—3 *Bl.* 442; *Gray's Ch. Pr.* 53; *Goldsmith's Doctrine and Pract. of Equity*, 28, *et seq.*

INLAGATION. The restitution of one outlawed to the king's protection, or to the benefit or condition of a subject.—*Cowel.*

INLAGH. He who is under the protection of the law, as opposed to *utlagh*, which signifies an outlaw, or one out of the protection of the law. —*Fleta, lib.* 1, *cap.* 47.

INLAND BILLS OF EXCHANGE. Bills of exchange are so called when

the drawer and drawee are both resident within the kingdom where drawn.—*Bayley on Bills of Exchange.*

INLEACED (from the Fr. *enlacer*). Entangled or ensnared.—*Cowel.*

INN. A house where the traveller is furnished with everything he has occasion for while on his way.—*Thompson* v. *Lacy*, 3 *B.* & *A.* 283. A mere coffee-house, or boarding or lodging-house, is not an inn. Upon the keeper of an inn the law throws a peculiar responsibility in guarding the goods of his guests; and if the goods are lost, unless it be through the *gross* negligence of the owner, the inn-keeper shall be liable; but his liability is limited to goods in the house (*infra hospitium*), and to the goods of regular guests (a resident boarder or lodger not being such a guest).—1 *Smith*, *L. C.* 50; *Calye's Case*, 8 *Coke*, 32; 2 *Stephen's Bl.* 133; *Cro. Jac.* 224; *Budle* v. *Morris.*

INNOTESCIMUS. Letters patent, so called from the words with which they conclude, viz. *innotescimus per præsentes.*—*Les Termes de la Ley.*

INNS OF COURT (*hospitia curiæ*). The societies of the Middle Temple, Inner Temple, Lincoln's Inn, and Gray's Inn, are so called, because the students therein do study the law to fit them for practising in the courts at Westminster or elsewhere. These, together with the inns of Chancery, and the two Serjeants' inns, are said to have formed one of the most famous universities in the world for the study of the law; and here exercises were performed, lectures read, and degrees conferred in the common law, as they are at other universities in the present day in the canon and civil laws. The degrees were those of barristers (first styled apprentices, from *apprendre*, to learn), who answered to our bachelors: as the state and degree of a serjeant, *servientis ad legem*, did to that of doctor. The above lectures, exercises, &c. so conducive to the improvement of the student, are now discontinued: at the Inner Temple, the exercises being compounded for by the payment of money, and in the Middle Temple, though the form is still observed, yet the spirit has entirely disappeared. The *Inns of Chancery* are considered as subordinate to the inns of court; they are Clifford's Inn, Symond's Inn, Clement's Inn, Lyon's Inn, Furnival's Inn, Staple's Inn, Barnard's Inn, and Thavies Inn, to which has since been added New Inn.—1 *Bl.* 23; *Dug. Orig. Jud.*; *Fortescue.*

INNUENDO (from *inuo*, to beck or nod with the head). That part of the declaration in actions of libel and slander which explains the meaning, or points the application of the libellous or slanderous matter complained of. An innuendo is frequently necessary where the language of the defendant is apparently innocent and inoffensive, but where, nevertheless, by virtue of its connection with known collateral circumstances, it conveys a latent and injurious imputation. So where, from the ambiguity of the defendant's expressions, it is doubtful who was meant, it is the proper office of the innuendo to render the allusion clear, by specifically pointing out the meaning. As where but one or two letters of the name are expressed, or the plaintiff is libelled under a fictitious or borrowed name, or where the libel is couched under a fable or allegory, whose tendency and meaning it is necessary to explain by reference. Thus, in the case of *Sir Miles Fleetwood* v. *Curl*, *Cro. Jac.* 557, the plaintiff was *receiver* of the court of wards, and the words were laid in the declaration with an innuendo, as follows: "*Mr. Deceiver* (meaning the plaintiff) hath deceived the king." In this example the averment in brackets is the

innuendo, and its obvious office was to show that the defendant in using the name or word *deceiver* intended to apply it to the plaintiff.—*See Stark. on Libel*, 418, *edit. 2nd.*; 1 *Term Rep.* 748; 2 *B. & Ad.* 673.

INPENNY and OUTPENNY. Money which by the custom of some manors is paid by the tenants on alienating their estates.—*Cowel.*

INQUEST (*inquisitio*, an inquiry). An inquiry by a jury duly impaneled by the sheriff into any cause civil or criminal. The term *inquest* is sometimes used to signify the jury itself before whom the question is brought.

Inquisition of Office. The act of a jury summoned by the proper officer to inquire of matters relating to the crown upon evidence laid before them; as to inquire whether the king's tenant for life died seised, whereby the reversion would accrue to the king; or whether A., who held immediately of the crown, died without heirs, in which case the land would belong to the crown by escheat. These inquests of office were more frequently in practice than at present, during the continuance of the military tenures amongst us; when, upon the death of any of the king's tenants, an inquest of office was held, called an *inquisitio post mortem*, to inquire of what lands he died seised, who was his heir, and of what age, in order to entitle the king to his marriage, wardship, relief, *primer seisin*, or other advantages, as the circumstances of the case might turn out. To superintend and regulate these inquiries the court of wards and liveries was instituted by stat. 32 H. 8, c. 46, which was abolished at the Restoration, together with the tenures upon which it was founded.

Inquisitio ex Officio mero, is one way of proceeding in ecclesiastical courts; and it is said, that formerly the oath *ex officio* was a sort of inquisition.—4 *Bl.* 301; *Cowel*; *Tomlins.*

INQUIRENDO. An authority given to some person or persons to inquire into something for the king's advantage: as to the cases in which it lies, see *Reg. Orig.* 72; *Cowel*; and see tit. *Inquest.*

INQUIRY, *Writ of.* A writ directed to the sheriff, commanding him to summon a jury, and to inquire into the amount of damages due from the defendant to the plaintiff in a given action. The necessity for this writ, and the inquiry under it, occurs in certain cases when the defendant has suffered judgment to pass against him by default or *nil dicit*, by confession or *cognovit actionem*, &c. in an action, the damages of which are not ascertained nor are ascertainable by mere calculation. In such case it becomes absolutely necessary that the *quantum* of damages should be assessed by a jury, who, under the presidence of the under sheriff, ascertain by the evidence of witnesses, as in a trial at *Nisi Prius*, what damages the plaintiff hath really sustained; and after their verdict the sheriff returns the inquisition, which is entered upon the roll in the manner of a *postea*.—3 *Step. Bl.* 635. See also tit. *Writ of Inquiry.*

INQUISITION. See tit. *Inquest.*

INQUISITION ex Officio mero. See tit. *Inquest.*

INQUISITION OF OFFICE. See tit. *Inquest.*

INQUISITORS (*inquisitores*). Are sheriffs, coroners, *super visum corporis*, or the like, who are empowered to inquire into certain cases.—*Britton, fol.* 4, and *Westm.* 1. Enquirers or inquisitors are also included under the name of *ministri*.—2 *Inst.* 211.

INROLMENT (*irrotulatio*). The transcribing a deed on to a roll of parchment, according to certain forms and regulations, is termed *inrolling* a deed. It is a common practice to inrol deeds for safe custody; that is, to get them transcribed upon the records of one of the king's courts at Westminster, or at a court of quarter sessions. The *inrolment* of a deed does not make it a record, but it thereby becomes a deed recorded. For there is a difference between a matter of record, and a thing recorded to be kept in memory. A record is the entry in parchment of judicial matters controverted in a court of record, and whereof the court takes notice; but an *inrolment* of a deed is a private act of the parties concerned, of which the court takes no cognizance at the time when it is done.—4 *Cruise*, 503; 2 *Lilly's Pr. Reg.* 69.

INSENSIBLE. — A term used in pleading to signify unintelligible; and the rule relating to it is, that if a pleading be *insensible* by the omission of material words, &c. it is bad. —*Stephen, Pleading*, 414.

INSIMUL COMPUTASSENT (*they settled their accounts together*). A species of *assumpsit* so called, because one of the counts of the declaration alleges that the plaintiff and defendant *had settled their accounts together*, and that the defendant engaged to pay the plaintiff the balance, but has since neglected to do so.—3 *Bl.* 164.

INSIMUL TENUIT. A species of the writ of *formedon* which lies for a coparcener against a stranger on the possession of the ancestor.—*Cunningham.*

INSOLVENT. Where a person's debts exceed his estate he is said to be insolvent.—*Bell's Sc. L. Dict.*

INSPECTION or EXAMINATION. Trial by inspection or examination is such, that when the point or question in dispute is evidently an object of sense, the judges of the court take upon themselves to decide the question upon the testimony of their own senses: for where the affirmative or negative of a question is matter of such obvious determination, it is not thought necessary to summon a jury to decide it, that being called to inform the conscience of the court in respect of dubious facts.—3 *Bl.* 331; 9 *Rep.* 31.

INSPEXIMUS (*we have inspected*). Letters patent are so called from the circumstance of this being the first word with which they begin (after the title of the king), and is the same with exemplification.—*Les Termes de la Ley.*

INSTANTER. Immediate, without loss of time. In this sense it is used when applied to the word *trial*: thus, a *trial instanter* means an immediate trial, a trial which is to take place forthwith.—4 *Bl.* 396.

INSTITUTION (*institutio*). A kind of investiture of the spiritual part of the benefice, as induction is of the temporal; for by institution the care of the souls of the parish is committed to the charge of the clerk. By institution the church is full, so that there can be no fresh presentation till another vacancy, in the case of a common patron; and the clerk may enter upon the parsonage house and glebe, and take the tithes; but he cannot grant or let them, or bring an action for them till induction.—1 *Bl.* 390.

INSURANCE or ASSURANCE. A security or indemnification given in consideration of a sum of money against the risk of loss from the happening of certain events. The

person who so insures is termed the *insurer*, and he whose property is insured is termed the *insured* or *assured;* and the instrument by which he effects such insurance is termed the *policy of insurance.* A policy of insurance may be defined to be a contract between two persons, stipulating that if one pay a sum of money (or premium), equivalent to the hazard run, the other will indemnify (or insure) him against the consequences which may ensue from the happening of any particular event. Thus, if I pay an insurance company ten shillings a year to indemnify me against the loss which I might sustain by my house being burnt down, this is termed insuring my house, the company undertaking, in consideration of the money which I pay, to give me a certain sum to rebuild it in case of fire. The same system is pursued in the insurance of ships (commonly called *marine insurance*), and in the insurance of lives of individuals. See *Park on Insurance,* and 2 *Bl.* 458, 459.

INTEND, *To.* To understand, to assume, to take a given construction of any passage or any words as the true construction.

INTENDMENT. Understanding, construction, &c. See tit. *Intend.*

INTENSIONE. A writ that formerly lay against one who entered after the death of a tenant in dower or other tenant for life, and thus kept out the reversioner or remainderman; and every entry upon the possession of the king was called an *intrusion.*—*F. N. B.* 203; *Cowel.*

INTERCOMMONING. When the commons of two adjacent manors join, and the inhabitants of both have immemorially fed their cattle promiscuously on each other's common, this is called intercommoning. —*Les Termes de la Ley.*

INTERDICT (*interdictio*). An ecclesiastical censure, prohibiting the administration of divine service in particular places, or to particular persons.—22 *H.* 8, *c.* 12.

INTERESSE TERMINI (*an interest in the term*). That species of property or interest which a lessee for years acquires in the lands demised to him before he has actually become possessed of those lands; as distinguished from that property or interest vested in him by the demise, and also reduced into possession by an actual entry upon the lands and the assumption of ownership therein, and which is then termed "an estate for years." Thus, where an estate for years of lands is granted to commence at a future period, the grantee of course cannot enter until that period has arrived; but still he has acquired a kind of estate or interest in the lands; and the estate or interest so acquired, and which he would continue to have until the period at which the term was to commence had arrived, and he had entered upon the possession of the lands, would be simply an *interesse termini.*—1 *Cru. Dig.* 239, *edit. 3rd;* 1 *Step. Bl.* 268.

INTEREST. In its legal signification means the estate or property which a man possesses either in land or chattels, the quantum of which of course depends upon the title under which he holds, and which therefore varies in exact proportion to the different titles by which property can be held. Thus in land a man may be possessed of a freehold *interest,* or of an *interest* less than freehold; which main classification may again be divided into his *interest* in fee-simple, fee-tail, or for life, or his interest for a term of years, or at will. So also with regard to the *interest* or

property in goods and chattels, it may be either joint or several; joint if shared with others (as with the part-owners of a ship), several, if possessed by one person exclusively, or by more than one, their interests however not being in common.—*See tit. Estate;* also tit. *Interesse Termini.*

INTERLOCUTORY (from Lat. *interloquor*). Something intervening or happening between the commencement of law proceedings and their termination, i. e. during the progress of an action at law or a suit in equity: thus, an *interlocutory decree* in a suit in equity signifies a decree that is not final, and does not conclude the suit, for it seldom happens that the first decree can be final; for if any matter of fact is strongly controverted, the court usually directs the matter to be tried by a jury; and the final decree is therefore suspended until such trial is over. An *interlocutory judgment* in an action at law signifies a judgment which is not final, but which is given upon some plea, proceeding, or default, occurring *in the course* of the action, and which does not terminate the suit: such are judgments on demurrer, or verdict for the defendant on certain dilatory pleas, called *pleas in abatement*, or those which are given when the right of the plaintiff in the action, although established, yet the amount of damages he has sustained is not ascertained, which cannot be done without the intervention of a jury: this happens when the defendant in an action suffers judgment by default, or confession, or upon a demurrer, in any of which cases, if the demand sued for be damages, and not a specific sum, then a jury must be called to assess them, therefore the judgment given by the court previous to such assessment by the jury is *interlocutory*, and not final, because the court knows not what damages the plaintiff has sustained. An *interlocutory order* is an order made during the progress of a suit upon some incidental matter which arises out of the proceedings: as an order for an injunction for instance. —3 *Bl.* 452; *Smith's Action at Law*, 89.

INTERPLEADER (from the Fr. *enterplaider*). When two or more persons claim the same thing of a third, and he, laying no claim to it himself, is ignorant which of them has the right to it, and fears he may be prejudiced by their proceeding against him to recover it, he may file a bill in equity against them, the object of which is to make them litigate their title between themselves, instead of litigating it with him, and such a bill is called a *Bill of Interpleader.*—*Gray's Chan. Pract.* 74. Or he may resort to a court of law for the same purpose.

INTERROGATORIES. The examination of witnesses in a chancery suit is not conducted *vivâ voce* in open court (as is the case in the common law courts), but upon written questions previously prepared by counsel, which are called *interrogatories:* hence the phrase *examining a witness upon interrogatories.* — 3 *Bl.* 383; *Gray's Chan. Pract.* 18.

INTERVENER. The interposition or interference of a person in a suit in the ecclesiastical court in defence of his own interest is so termed, and a person is at liberty to do this in every case in which his interest is affected either in regard of his property or his person. Thus, in a matrimonial cause, if proceedings be taken against a party who has either solemnized or contracted marriage with another, such other or third party may, if he or she pleases, interpose in such suit, to protect his or her own rights, in any part or stage of the proceedings, even after the conclusion of the cause.—*Oughton,*

tit. 14; 3 *Phill.* 586; 2 *Hag. Con. R.* 59; *as cited in Rog. Ecc. Law*, 479.

INTESTATE (*intestato*). Without making a will. Thus a person is said to die *intestate*; i. e. to die without making a will; to die without leaving anything to *testify* what his wishes were with respect to the disposal of his property after his death. This word is not only applied to the above-mentioned *condition* in which a person dies, but is also used to signify the *person himself*. Thus, in speaking of the property of a person who died *intestate*, it is common to say the *intestate's* property, i. e. the property of the *person* dying in an intestate condition. An *intestate* is the opposite to *testator*; the latter word signifying a man who dies having made a will.—2 *Bl.* 494.

INTRUSION (*intrusio*). A species of injury by ouster, or amotion of possession from the freehold, being an entry of a stranger, after a particular estate of freehold is determined, before him in remainder or reversion; as when a tenant for life dies seised of certain lands and tenements, and a stranger enters thereon after such death, and before any entry made by him in remainder or reversion.—*F. N. B.* 203, 204; 1 *Cruise*, 161, 316. The word is also applied to copyholds, when a stranger enters or *intrudes*, before the reversioner or remainderman, after the determination of the particular copyhold estate. The writ which lay against such intruders was also called *a writ of intrusion.*—*Les Termes de la Ley*; *Old Nat. Brev.* 203.

INTRUSION DE GARD (*intrusion of ward*). A writ that lay against an infant, for entering into his lands when within age, and keeping out his lord.—*Old Nat. Brev.* 90.

INTRUSIONE. See tit. *Intrusion.*

INUENDO. See tit. *Innuendo.*

IN VENTRE SA MERE, Fr. (*in its mother's womb*). Every legitimate infant *in ventre sa mere*, or in its mother's womb, is supposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate made to it; so if lands be devised to B. for life, remainder to such child or children as shall be *living* at the time of his decease, a posthumous child will take equally with those who were born before B.'s death.—1 *Bl.* 130; *Doe* v. *Clark*, 2 *Hen. Bl.* 399.

INVEST. See tit. *Devest.*

INVESTITURE (from the Fr. *investir*). A ceremony which accompanied the grant of lands in the feodal ages, and consisted in the open and notorious delivery of possession in the presence of the other vassals; which perpetuated among them the æra of their new acquisition at the time when the art of writing was very little known, and thus the evidence of the property was reposed in the memory of the neighbourhood, who in case of a disputed title were afterwards called upon to decide the difference.—2 *Bl.* 53.

INURE. See tit. *Enure.*

IPSO FACTO (*from the deed itself*). This phrase is used as follows. By stat. 13 Eliz. a church is made void for not reading the articles; adjudged that there needs no deprivation, because it becomes void *ipso facto*. This means that there needs no legal process to make the church void; because *the fact or deed itself* of the articles not having been read, already makes it void.—*Cro. Eliz.* 679.

IRREGULARITY (*irregularitas*). In the common law this word retains its popular signification of disorder; but

in the canon law it signifies more particularly an impediment to the taking of holy orders, arising from the notoriously bad character of the candidate, or such like cause.—*Cowel.*

IRREPLEVIABLE or IRREPLEVISABLE. Not to be *replevied*, or set at large on sureties.—*Cowel.*

ISSUABLE PLEA. An issuable plea is that which puts the merits of the cause either on the facts or the law, in issue;—which will decide the action.—*Per Curiam in Steele* v. *Harmer*, 14 *Mee. & W.* 139. It seems however to be by no means clear that a plea to be "issuable" must put the *substantial or moral* merits of the cause in issue. Thus a plea which goes simply to show that the plaintiff had no *present* cause of action, as in an action by an attorney for work and labour, that the plaintiff had not delivered a signed bill a month before action brought, has been held to be an *issuable* plea.—*Wilkinson* v. *Page*, 1 *Dowl. & L.* 913. See also *Staples* v. *Holdsworth*, 4 *Bing. N. C.* 144; *per Tindal, in Burch* v. *Leake*, 8 *Sc. N. R.* 67. When a defendant obtains by way of indulgence further or additional time to plead, such further time is granted him upon the condition that he shall plead an *issuable* plea, and he is then said to be under terms to *plead issuably.*

ISSUABLY *Pleading.* See tit. *Issuable Plea.*

ISSUABLE TERMS. Hilary and Trinity terms are so called, because these being the terms which immediately precede the assizes, the issues for trial are then made up.

ISSUE (*exitus*). Is the disputed point or question to which the parties in an action have narrowed their several allegations, and upon which they are desirous of obtaining the decision of the proper tribunal. When the plaintiff and defendant have arrived at some specific point or matter affirmed on the one side and denied on the other, they are said to be *at issue* (*ad exitum*, i. e. at the *end* of their pleading); the question so set apart is called *the issue*, and is designated, according to its nature, as an issue *in fact* or an issue *in law*. If it is an issue *in fact*, it is (almost universally) tried by the country (i. e. by a jury of twelve men); if an issue in law, by the judges of the land constituting the court in which the action has been brought.—*Steph. on Pleading*, 25, *edit.* 4*th.*

ISSUE ROLL. In ancient times it was the practice of the courts, when the pleadings were carried on orally, to have a contemporaneous record of the proceedings made out upon a parchment roll called the "Issue Roll." This practice, although long grown into disuse, was until recently still supposed in contemplation of law to exist; and the courts still required that it should be actually made up, or at all events commenced, or an *incipitur*, as it was called, was entered upon the roll, and certain fees were paid to the officers for the making it up. Practically, however, this roll was of no use, and in consequence it was by a late rule of court abolished; and the only entry of the proceedings upon record, in the present day, is that made upon the *Nisi Prius Record*, or upon the *Judgment Roll*, according to the nature of the case, and no fees are allowed to be paid in respect of any other entry made or supposed to be made upon any *roll* or *record* whatever.—1 *Pl. R. H. T.* 4 *Wm.* 4.

ISSUES. Frequently signifies fines or amerciaments levied upon a person who has been guilty of some default. Thus the fines to the king

levied out of the issues and profits of sheriffs' lands, by reason of their having been guilty of some negligence or default, are so termed. So the goods of a defendant which have been distrained under a writ of distringas, in order to compel his appearance to the action, are termed "*issues.*" See *Greaves* v. *Stokes*, 1 *Taunt.* 415; 2 *Lil. Abr.* 89.

ISSUES ON SHERIFFS. See tit. *Issues.*

ITINERANT (*itinerans*). Travelling or moving about: thus the judges, who are now called justices of assize, were formerly called justices itinerant, from the circumstance of their *travelling* into several counties to hear causes ready for trial.—3 *Bl.* 59.

J.

JACENS HÆREDITAS. An estate in abeyance.

JACTITATION (*jactitatio*). A false boasting. The word is commonly used with reference, 1st, to marriage; 2nd, to the right to a seat in a church; 3rd, to tithes.

Jactitation of marriage is the boasting or giving out by a party that he or she is married to some other, whereby a common reputation of their matrimony may ensue.

Jactitation of a right to a seat in a church appears to be the boasting by a man that he has a right or title to a pew or sitting in a church to which he has legally no title.

Jactitation of tithes is the boasting by a man that he is entitled to certain tithes, to which he has legally no title.—*See Reg. Eccl. Law*, 482.

JACTITATION OF MARRIAGE. See tit. *Jactitation.*

JACTITATION OF A RIGHT TO A SEAT IN A CHURCH. See tit. *Jactitation.*

JACTITATION OF TITHES. See tit. *Jactitation.*

JEOFAILE (from the Fr. *j'ai faillé*, I have failed). An oversight in pleadings or in other law proceedings. The statutes of jeofails are so called because when a pleader perceives any mistake in the form of his proceedings, and acknowledges such error (*j'ai faillé*), he is at liberty by those statutes to amend it.—*Stra.* 1011; 3 *Bl.* 407.

JETSAM, JETSON or JETTISON. By this uncouth appellation are distinguished goods which have been cast into the sea, and there sink and remain under water.—2 *Steph. Bl.* 557.

JOINDER. Joining, uniting together, &c. Thus joinder in action signifies the joining or uniting of two persons together in one action against another; and such an action is termed a *joint action.*

JOINDER IN DEMURRER. When a defendant in an action tenders an issue of law (called a *demurrer*), the plaintiff, if he means to maintain his action, must accept it, and this acceptance of the defendant's tender, signified to the plaintiff in a set form of words, is called a *joinder in demurrer.*

JOINDER OF ISSUE. In an action at law, in any stage of the pleadings, when either side traverses or denies the facts pleaded by his antagonist, he usually tenders an issue, as it is called, which if the other party accepts, issue is said to be *joined.*—3 *Bl.* 311 *et seq.*; *Smith's Action at Law.*

JOINT ACTIONS. See tit. *Joinder.*

JOINT AND SEVERAL. A joint and several bond is a bond in which the obligors have rendered themselves both jointly and individually liable to the obligee; so that the latter, in the event of the nonperformance of the conditions of the bond by the obligors, may sue them either jointly or separately as he deems the more advisable. The phrase is also frequently used with reference to contracts not under seal (i. e. simple contracts) and it often becomes a matter of serious moment to know whether a given contract is a *joint* or a *several* contract. Thus, where a broker was employed to sell a ship belonging to three part-owners, two of whom communicated with him on the subject, and to them he paid their shares of the proceeds of the sale; but, after admitting the amount of the third part-owner's share to be in his hands, refused to pay it to him without the consent of the other two, and he alone brought an action for his share, it was held, that he could not sue alone, but should have sued jointly with the other two part-owners.—1 *Ch. Pl.* 9, *6th edit.*; 1 *Saund* 153, *n.* (1).

JOINT COMMITTEES OF LORDS AND COMMONS. Committees formed jointly of members of both houses are now obsolete, and have not been had recourse to for the last century and a half.

JOINT INDICTMENTS. When several offenders are joined in the same indictment, such an indictment is termed a *joint indictment*; as when principals in the first and second degree, and accessaries before and after the fact, are all joined in the same indictment.—2 *Hale*, 173.

JOINT TENANTS. Those who hold lands or tenements by joint tenancy. It may be further described by the following passage from Cruise. When lands are granted to two or more persons to hold to them and their heirs, or for the term of their lives, or for the term of another's life, without any restrictive, exclusive, or explanatory words, all the persons named in such grant, to whom the lands are so given, take a *joint estate*, and are thence called *joint tenants*.—2 *Cruise*, 431; *Litt. sec.* 277.

JOINT TENANTS IN SURVIVORSHIP. The doctrine of *survivorship* is a leading characteristic of joint tenancy; by which, when two or more persons are seised of a joint estate of inheritance for their own lives or *pur auter vie*, or are jointly possessed of any chattel interest, the entire tenancy upon the decease of any of them remains to the survivors, and at length to the last survivor, so that he becomes entitled to the whole estate, whatever it be, whether an inheritance, or a common freehold only, or even a less estate.—2 *Ch. Bl.* 184.

JOINTRESS. See tit. *Jointure.*

JOINTURE. A settlement of lands or tenements made to a woman on marriage. It is defined by Lord Coke to be "a competent livelihood of freehold for the wife of lands or tenements, &c. to take effect presently in possession or profit, after the decease of the husband, for the life of the wife at least." The woman on whom such a settlement of lands is made is termed a *jointress*.—1 *Cruise*, 199; 2 *Bl.* 137; 1 *Inst.* 36.

JOURNALS OF THE HOUSE. In each house of parliament the clerks at the table take minutes of the proceedings, which are afterwards enlarged and corrected, and form the journals of the house.

JOURNEY'S ACCOUNTS (*journées accompts*). An old obsolete phrase which was used in our law, and is

thus described by the author of *Les Termes de la Ley.* If a writ were abated without the default of the plaintiff or demandant, he might purchase a new writ, which if it were purchased by *journies accounts* (that is, *within as little time as possible after the abatement of the first writ*), then the second writ shall be as a continuance of the first, and so should oust the tenant or defendant of his voucher, &c.—*Les Termes de la Ley.*

JUDGMENT (*judicium*). It is defined to be the sentence of the law pronounced by the court upon the matter appearing from the previous proceedings in the suit. Judgment is given either for the plaintiff, or the defendant; when for the plaintiff, it is either a judgment by *confession* or by *default;* when given for the defendant, it is either a judgment of *non suit, non pros, retraxit, nolle prosequi, discontinuance,* or *stet processus;* and judgment may be given for either party upon *demurrer,* issue of *nul tiel record,* or *verdict.* A judgment by *confession* or *default* is such a judgment as is signed against the defendant when the justice of the plaintiff's claim is admitted by him. A judgment upon *non suit* is a judgment given to the defendant whenever it clearly appears that the plaintiff has failed to make out his case by evidence. A judgment of *non pros* is a judgment which the defendant is entitled to have against the plaintiff, when he does not follow up (*non prosequitur*) his suit as he ought to do; as by delaying to take any of those steps which he ought to take beyond the time appointed by the practice of the courts for that purpose. A *retraxit* or *nolle prosequi,* is when the plaintiff of his own accord declines to follow up his action; the difference between them is, that a *retraxit* is a bar to any future action brought for the same cause; whereas a *nolle prosequi* is not, unless made after judgment. —*Bowden* v. *Horne,* 7 *Bing.* 716. A judgment on a *discontinuance* is when the plaintiff finds that he has misconceived his action, and obtains leave from the court to *discontinue* it, on which judgment is given against him, and he has to pay the expenses. A judgment on a *stet processus* is entered when it is agreed by leave of the court that all further proceedings shall be stayed; though in form this is a judgment for the defendant, yet it is generally like a *discontinuance,* being in point of fact for the benefit of the plaintiff, and entered on his application; as for instance, when the defendant has become insolvent, &c. Judgment on *demurrer* is such a judgment as is pronounced by the court upon a question *of law* submitted to them, as opposed to a question *of fact* which is submitted to a jury. A judgment upon an issue of *nul tiel record* is when a matter of record is pleaded in any action, as a fine, a judgment, or the like, and the opposite party pleads "*nul tiel record,*" i. e. that there is no such matter of record existing; upon this, issue is joined and tendered in the following form: "And this he prays may be inquired of by *the record,* and the other doth the like;" and thereupon the party pleading the record has a day given him to bring it in, and proclamation is made in court for him to "bring forth the record by him in pleading alleged, or else he shall be condemned," and on his failure to do so, his antagonist shall have *judgment* to recover. A judgment upon a *verdict* is the judgment of the court pronounced after the jury have given their verdict. As to *interlocutory* and *final* judgments, see tit. *Interlocutory.* 3 *Bl* 331, 395, 460; *Smith's Action at Law,* 52, 89; *Saunders,* 207.

JUDGMENT ROLL. A parchment roll upon which the proceedings in the cause up to the issue, and the award of venire inclusive, together

with the judgment which the court has awarded in the cause, are entered. This roll, when thus made up, is deposited in the treasury of the court, in order that it may be kept with safety and integrity. In practice, the making up and depositing the judgment roll is generally neglected, unless in cases where it becomes absolutely necessary to do so; as when, for instance, it is required to give the proceedings in the cause in evidence in some other action, for in such case the judgment roll, or an examined copy thereof, is the only evidence of them that will be admitted. — *Smith's El. View; Boote's Suit at Law*; 3 *Step. Bl.* 632.

JUDICATORES TERRARUM. Persons so called in the county palatine of Chester, who on a writ of error out of chancery are to consider of the judgment given there, and to reform it; and if they do not, or it be found erroneous, they forfeit 100*l.* to the king, according to the custom.— *Dyer*, 348.

JUDICIAL WRITS. Such writs as issue under the private seal of the courts, and not under the great seal of England, and are tested or witnessed not in the king's name, but in the name of the chief judge of the court out of which they issue, are so called. The word *judicial* is used in contradistinction to *original*; original writs signifying such as issue out of chancery under the great seal, and are witnessed in the king's name. Since the uniformity of process act (2 Will. 4, c. 39, sec. 31), the distinction has become almost useless. —3 *Bl.* 282.

JURAT (from the Lat. *juratus*, sworn by). The clause written at the foot of an affidavit, stating when, where, and before whom such affidavit was sworn, is called the *jurat*. — 2 *Arch. Pract.* 1231.

JURATS. The judges of the royal court in the island of Jersey are so termed. In this court all causes are originally determined by its own officers, the bailiffs and *jurats* of the island; but an appeal lies from them to the king in council.—1 *Step. Bl.* 47.

JURIDICAL DAYS (*dies juridici*). Days in court for the administration of the law.— *Cowel.*

JURISDICTION (*jurisdictio*). The right, power or authority which an individual or a court has to administer justice. Thus the three superior courts of common law, viz., the King's Bench, Common Pleas, and Exchequer, have *jurisdiction* over all personal actions throughout England; that is, they have power and authority to hear and determine such actions throughout England. The Sheriffs' Court is said to have *jurisdiction* over personal actions when the sum sought to be recovered does not amount to 20*l.*; that is, it has the power and authority to hear and determine such actions.

JURIS UTRUM. A writ that lay for the succeeding incumbent of a benefice, to recover the lands or tenements belonging to the church, which had been aliened by his predecessor.—*Les Termes de la Ley.*

JUROR (*jurator*). See tit. *Jury.*

JURY (*jurata*, from *jurare*, to swear). A certain number of men (usually twelve) to whose decision the matter in dispute between a plaintiff and defendant is submitted, and who are bound upon their oaths to decide (or give their *verdict*) according to the evidence which is laid before them on the trial of the cause. Such men individually are called *jurors*. A jury is either a *common* jury or a *special* jury. A common

jury consists of persons between the ages of twenty-one and sixty, who shall have 10*l.* a-year, beyond reprises, in lands and tenements of freehold, copyhold, or customary tenure, or held in ancient demesne, or in rents issuing out of such tenements, in fee simple, fee tail, or for life, or twenty pounds a-year in leaseholds held for twenty-one years or any longer term, or any term determinable on a life or lives; or being a householder, shall be rated to the poor-rate, or in Middlesex to the house-duty, in a value of not less than 30*l.*; or who shall occupy a house containing not less than fifteen windows. These qualifications, however, do not extend to jurors of any liberties, franchises, cities, or boroughs, who possess civil or criminal jurisdiction. It is called a *common jury*, because the matter to be tried by it is only of a common or ordinary nature. A *special* jury consists of persons of the degree of squire or upwards, or of the quality of banker or merchant, &c.; it is called *special*, because the matter to be tried by it is usually of a *special* and important nature, and is supposed to require men of education and intelligence to understand it. — 3 *Bl.* 349; *Smith's Action at Law*, 75.

JURY OF MATRONS. See tit. *Matrons, Jury of.*

JUS. Right, law, authority, &c.

Jus accrescendi is used by our old law writers to signify the right of survivorship amongst joint tenants, &c.

Jus ad Rem signifies the inchoate or imperfect right to a thing, in contradistinction to *jus in re*, which signifies the complete and perfect right in the thing.

Jus duplicatum or *droit-droit*, signifies the right of possession joined with the right of property.

Jus in re. See *Jus ad Rem.*

Jus Patronatus is a commission from the bishop directed usually to his chancellor and others of competent learning, who are to summon a jury of six clergymen and six laymen, to inquire into and examine who is the rightful patron of a church, and if upon such inquiry made and certificate thereof returned to the commissioners, he admits and institutes the clerk of that patron whom they return as the true one, the bishop secures himself at all events from being a disturber, whatever proceedings may be had afterwards in the temporal courts.

Jus Postliminii is a right to a claim after a re-capture as applied in maritime law; it is said to be derived from the Roman *jus postliminii*, which restored the citizen of Rome who had been made a slave to his *threshold*, i. e. to his franchise: the term is therefore metaphorically used in our admiralty courts, to signify a resumption of an original inherent right to a recaptured British ship in the legal owners.

Jus recuperandi, intrandi, &c. is the right of recovering and entering lands. 2 *Bl.* 184, 199, 312; *Tomlins; Cowel.*

JUSTICES (*justiciarii*). Officers appointed by the crown to administer justice. The various sorts of justices will be found under their proper heads in this title; and first then,

Justices of Assise (*justiciarii ad capiendas assisas*), or, as they are sometimes called, justices of *Nisi Prius*. The judges of the superior courts at Westminster who go circuit into the various counties of England and Wales twice a year, for the purpose of disposing of such causes as are ready for trial at the *assizes*, are termed *justices of assize*. See also tit. *Circuits.*

Justices in Eyre (*justiciarii itinerantes*), so called from the old French word *erre*, i. e. a journey, were those justices who in ancient times were sent by commission into various coun-

ties to hear more especially such causes as were termed *pleas of the crown*; they differed from the justices of *oyer and terminer*, inasmuch as the latter were sent to one place, and for the purpose of trying only a limited number of special causes; whereas the justices in eyre were sent through the various counties with a more indefinite and general commission: in some respect they resembled our present justices of assize, although their authority and manner of proceeding differed much from them.

Justice of the Forest (*justiciarius forestæ*). An officer who had jurisdiction over all cases committed within the forest against vert or venison. The court wherein this justice sat and determined such causes was called the *justice seat of the forest*. He was also sometimes called the *justice in eyre of the forest*.

Justices of Gaol Delivery (*justiciarii ad gaolas deliberandus*). Those justices who are sent with commission to hear and determine all causes appertaining to such persons who for any offence have been cast into gaol. Part of their authority was to punish those who let to mainprise those prisoners who were not bailable by law nor by the statute *de finibus*; and they seem formerly to have been sent into the country upon this several occasion, but afterwards justices of assize had the same authority given them.

Justice of the Hundred. A hundredor, lord of the hundred, he who had the jurisdiction of a hundred and held the hundred court.

Justices of the Jews (*justiciarii ad custodiam Judæorum assignati*). Justices appointed by Richard the First to carry into effect the laws and orders which he made for regulating the contracts and usury of the Jews.

Justices of labourers. Justices who were formerly appointed to redress the frowardness of labouring men who would not work without having unreasonable wages granted them.

Justices of Nisi Prius. See tit. *Justices of Assize*.

Justices of Oyer and Terminer (*justiciarii ad audiendum et terminandum*). These justices of *oyer and terminer* are certain persons appointed by the king's commission, among whom are usually two judges of the courts at Westminster, and who go twice in every year into every county of the kingdom (except London and Middlesex), and at what is usually called the assizes *hear and determine* all treasons, felonies, and misdemeanors. They are usually the same persons who have before been described under the titles of *justices of assize* and justices of *gaol delivery*.

Justices of the Pavilion (*justiciarii pavilionis*). Certain justices of a pie-powder court held under the Bishop of Winchester at a fair on St. Giles's-hill near the city; and are said to have had the most transcendant jurisdiction.

Justices of the Peace (*justiciarii ad pacem*). Certain justices appointed by the king's special commission under the great seal jointly and separately, to keep the peace of the county where they dwell. Any two or more of them are empowered by this commission to inquire of and determine felonies and other misdemeanors; in which number some particular justices, or one of them, are directed to be always included, and no business to be done without their presence, the words of the commission running thus, "*quorum aliquem vestrum, A. B. C. D. &c. unum esse volumus;*" whence the persons so named are usually called justices of the *quorum*.—1 *Bl.* 351; 4 *Bl.* 270; *Cunningham; Cowel; Tidd.*

JUSTICIAR or JUSTICIER (Fr. *justicier*). One who administers justice; a judge.

JUSTICIES. A writ directed to the sheriff, empowering him for the

sake of dispatch to try an action in his county court for a larger amount than he has the *ordinary* power to do. It is so called because it is a commission to the sheriff to do any party *justice*.—3 *Bl.* 36; 4 *Inst.* 266.

JUSTIFIABLE HOMICIDE. See tit. *Homicide.*

JUSTIFICATION (*justificatio*). Pleas in *justification* or excuse are such as show some *justification* or excuse of the matter charged in the declaration, the effect of which is to show that the plaintiff never had any right of action because the act charged was lawful; a plea of *son assault demesne* is one of this kind of pleas.—*Stephen on Plead.* 224.

JUSTIFICATORS. See tit. *Compurgators.*

JUSTIFYING BAIL. Is the act of proving to the satisfaction of the court that the persons put in as bail for the defendant in an action are competent and sufficient persons for the purpose. No persons are *justified* in becoming *bail* for a defendant unless they are householders and possess certain other qualifications with reference to property, &c.; but it frequently happens that persons do become bail for a defendant who are not so qualified, or whom the plaintiff suspects not to be so qualified; and in this case the plaintiff objects to such bail (or as it is termed *excepts* to them), who are then called upon to *justify* themselves, and this they do by swearing themselves to be housekeepers and to possess the other qualifications required of them; and this is termed *justifying bail.* They frequently *justify* voluntarily without being required to do so by the plaintiff.—1 *Arch. Pract.* 254; 3 *Bl.* 291; *Tidd*, 149.

K.

KEEPER OF THE FOREST (*custos forestæ*). An officer who when the forest laws were in operation had the principal government of all things relating to the forest, and the superintendence of all officers belonging to the same.—*Manwood, part* 1, *p.* 156.

KEEPER OF THE GREAT SEAL (*custos magni sigilli*). A high officer of state through whose hands pass all charters, grants and commissions of the king under the *great seal.* He is styled *Lord Keeper of the Great Seal*, and this office and that of chancellor are united in one person; for the authority of the lord keeper was by stat. 5 Eliz. c. 18, declared to be exactly the same; and he is with us at the present day created by the mere delivery of the king's great seal into his custody.—3 *Bl.* 47; *Comyn's Dig. tit. Chancery.*

KEEPER OF THE PRIVY SEAL (*custos privati sigilli*). An officer through whose hands pass all charters signed by the king before they come to the great seal. He is a privy councillor and was anciently called *clerk of the privy seal*, but is now generally called the *lord privy seal.*—*Rot. Parl.* 11 *H.* 4.

KEYUS KEYS. A guardian, warden, or keeper; hence the twenty-four chief commoners in the Isle of Man, from their being as it were conservators of the liberties of the people in that district, are called *keys* of the island.—*Mon. Angl. tom.* 2, *p.* 71.

KYLLYTH-STALLION. A custom by which lords of manors were bound to provide a stallion for the use of their tenants' mares.—*Spelman; Cowel.*

cular interest in land and who holds himself under a superior landlord.

LAND-MAN (*terricola*). The *terre-tenant*.—*Cowel.*

LAND TAX. An annual charge levied by the government upon the subjects of this realm in respect both of their real and personal estates. The method of raising it is by charging a particular sum upon each county according to a certain valuation; and this sum is assessed and raised upon individuals by commissioners duly appointed for that purpose.—2 *Burn's Justice*, 61; 1 *Bl.* 312.

LAND TENANT. He who is in the actual possession or bodily occupation of the land.—*Cowel.*

LANGEMANNI. Lords of manors according to Sir Edward Coke's definition, who spells it *lannemanni*.—1 *Inst. fol.* 5.

LANIS DE CRESCENTIA WALLIÆ TRADUCENDIS ABSQUE CUSTUMA, &c. A writ that formerly lay to the customer of a port for the permitting one to pass over wools without custom, because he had paid custom in *Wales* for it before.—*Reg. of Writs.* 279.

LAPSE (*lapsus*). A species of forfeiture by which the right of presentation to a church accrues to the ordinary by the neglect of a patron to present; to the metropolitan by neglect of the ordinary; and to the king by neglect of the metropolitan. This word is also applied to a legacy. Thus, if a person to whom a legacy is bequeathed (i. e. a legatee) dies before the testator, the legacy is said to be *lapsed*, i. e. lost, fallen to the ground; because, in such case, the relatives or other representatives of such legatee cannot claim the legacy, but it will sink into the residuum of the testator's personal estate.—*Toll. Exec.* 304; 2 *Bl.* 276, 512.

LAPSED LEGACY. See tit. *Lapse.*

LARCENY (Fr. *larrecin*). Larceny is the wrongful taking and carrying away of the *personal* goods of any one from his possession, with a felonious intent to convert them to the use of the offender without the consent of the owner. Larceny was formerly divided into *grand* and *petty* larceny; the former including the stealing of goods above the value of 12*d.*; the latter of that value or under. This distinction was abolished by stat. 7 & 8 Geo. 4, c. 29, and now all larcenies are subject to the same incidents as grand larceny. Larceny is sometimes distinguished into *simple* and *compound*; the former being larceny of the goods only; the latter larceny from the person or habitation of the owner.—1 *Hale*, 510; 4 *Bl.* 229; *Matt. Crim. Law*, 299.

LAST HEIR (*ultimus hæres*). He to whom lands come by escheat, in the event of there being no lawful heir to the same: thus, in the case of a copyhold estate, the lord of the manor would be the last heir; and in many other cases the king would be such.—*Cowel.*

LATHE, LATH, or LETH (Sax. *læthe*). A great portion of a county containing three or more hundreds or wapentakes.—*Les Termes de la Ley.*

LATIMER. Seems to be used by Sir Edw. Coke to signify an interpreter.—*Cowel.*

LATITAT (from *lateo*, to lie hid). A writ, which before the uniformity of process act was the process used for commencing personal actions in the King's Bench; it recited the bill of Middlesex, and the proceedings

thereon, and that it was testified that the defendant "*latitat et discurrit*," lurks and wanders about, and therefore commanded the sheriff to take him, and have his body in court on the day of the return.—3 *Bl.* 286.

LAW (*lex*). This word has various significations, and when used without any qualifying adjunct, simply signifies a *rule of action*. This is the most enlarged sense in which the word can be used, and applies not only to those rules or systems of rules which different governments lay down for the internal regulation of their respective communities, but also includes within it those fixed and invariable principles, in conformity with which nature carries on her operations. When, however, we wish to restrict the sense, or to limit the application of the word, we use it in conjunction with some other; thus, when we apply it to those rules or principles of morality, which our reason enables us to discover, and our conscience commands us to obey, we call it the *law of nature;* and when the same rules and principles are applied to the regulation of the conduct of nations in their intercourse with each other, it is then termed the *law of nations*. The word "law," however, in a still more limited sense, signifies that body or system of rules which the government of a country has established for its internal regulation, and for ascertaining and defining the rights and duties of the governed, and it is then commonly called *municipal* or *civil* law, and, in popular language, "the law of the land." The municipal law of England is composed of written and unwritten laws (*lex scripta* and *lex non scripta*): or, in other words, of the statutes of the realm, and of the custom of the realm, otherwise termed the "common law;" on both of which branches of the law the superior courts exercise their judgment, giving construction and effect to the former, and by their interpretation declaring what is, and what is not the latter. The following extract from a recent important case furnishes a good illustration of the division of our municipal law into the *lex non scripta*, or the *common law*, and the *lex scripta*, or the *written or statute law*, and of the mode in which the courts exercise their judgment thereon:—"Two questions of importance were raised in the course of the argument. The first is whether, *at common law*, a foreigner residing abroad, and composing a work, has a copyright in England. The second is, whether such foreign author, or his assignee, has such a right *by virtue of the English statutes*. * * * * * * We are all of opinion that no such right exists in a foreigner *at the common law;* but that it is the creature of the municipal law of each country, and that in England it is altogether governed *by the statutes* which have been passed to create and regulate it. A foreign author having, therefore, *by the common law*, no exclusive right in this country, the only remaining question is, whether he has such a right *by the statute law:* and this depends *on the construction of the statutes* relating to literary copyright, which were in force at the time of the transaction in question." See *per Pollock, C. B.* in *Chappel* v. *Purday*, 14 *Mee. & W.* 316; also 1 *Reeves's Hist.* 1. For an explanation of the different kinds of law, see their particular titles.

LAW-DAY (*lagedayam*). A leet or sheriff's tourn. Cowel says that it was any day of open court, and commonly used for the more solemn courts of a county or hundred.—*Les Termes de la Ley; Cowel.* See also *Dies Juridicus.*

LAW-WORTHY. Being entitled

to, or having the benefit and protection, of the law.—*Brady on Bor.* 16, *fo. ed.*

LAWING OF DOGS. See tit. *Expeditate.*

LAWLESS MAN (SAX. *laugheless man*). An outlaw.—*Cowel.*

LAW OF MARQUE (from the German word *march*, i. e. a bound or limit). A sort of law of reprisal, which entitles him who has received any wrong from another, and cannot get ordinary justice, to take his shipping or goods when he can find them within his own bounds or precincts.—*Cowel.*

LAW MERCHANT (*lex mercatoria*). One of the branches of the unwritten or common law, consists of *particular customs*, or laws which affect only the inhabitants of *particular districts*, under which head may be referred the law or custom of merchants (*lex mercatoria*), which is a particular system of customs used only among *one set of the king's subjects*, which, however different from the general rules of the common law, is yet engrafted into it, and made a part of it; being allowed for the benefit of trade to be of the utmost validity in all commercial transactions; for it is a maxim of law, that "*cuilibet in sua arte credendum est.*" This law of merchants comprehends the laws relating to bills of exchange, mercantile contracts, sale, purchase and barter of goods, freight, insurance, &c.—1 *Chitty's Bl.* 76, *n.* 9.

LAW OF NATIONS. The law of nations consists of a system of rules or principles deduced from the law of nature, intended for the regulation of the mutual intercourse of nations. This law is founded on the principle, that the different nations ought to do to each other in time of peace as much good, and in time of war as little harm, as may be possible without injuring their own proper interests; and this law comprehends the principles of national independence, the intercourse of nations in peace, the privileges of ambassadors, consuls, and inferior ministers; the commerce of the subjects of each state with those of the others; the grounds of just war, and and the mode of conducting it; the mutual duties of belligerent and neutral powers; the limit of lawful hostility; the rights of conquest; the faith to be observed in warfare; the force of an armistice, of safe conducts and passports; the nature and obligations of alliances; the means of negociation, and the authority and interpretation of treaties.—1 *Chitty's Commercial Law*, 25, 26; *Puffendorff.*

LAW OF NATURE. See tit. LAW.

LAW SPIRITUAL (*lex spiritualis*). The law which is administered in the Ecclesiastical Courts. See tit. *Courts Ecclesiastical.*

LAW OF THE STAPLE. The same as the law merchant, which see, under that title. See also tit. *Staple.*

LAY, *To.* Signifies to allege, to state, &c., *ex. gr.*: "No inconvenience can arise to the defendant from either mode of *laying* the assault."—*Per Curiam*, 2 *Bos. & Pul.* 427; 6 *Mod.* 38. "If you *lay* (i. e. allege or state) an ouster in your declaration, you must *lay* a re-entry." *Per Holt, C. J.* So "laying the venue" signifies the stating, naming, or placing in the margin of a declaration any given county as the county in which the plaintiff proposes that the trial shall take place. See further tit. *Venue.*

LAY CORPORATIONS. See tit. *Corporation.*

LAY FEE (*feodum laicum*). Lands held of a *lay* lord in *fee*, in consideration of the common services to which military tenures were subject, as distinguished from the ecclesiastical tenure in frank-almoigne, which was discharged from those services.—2 *Bl.* 101.

LAYING THE VENUE. See tit. *Lay*.

LEAD, *To*. Has several significations. 1st. In a grant or claim of customary right, to "lead" manure to any given spot means to draw it in a cart to such spot.—1 *Q. B. Rep.* 796. 2nd. At a trial at Nisi Prius a counsel is said to "lead" in a cause when he directs the management and conduct of the cause; whilst the junior counsel only assists under his direction, and takes altogether a subordinate part. 3rdly. A deed was said to "lead" a use, when it pointed out or particularized the use or uses to which lands were destined which were about to be conveyed to a third indifferent party for the use or benefit of another. See a further explanation of this under tit. *Leading a Use*.

LEADING A USE. When lands were conveyed by that species of conveyance termed a "fine and recovery," the legal seisin and estate became thereby vested in the cognizee or recoveror, i. e. in the person who was the object of that conveyance. But if the owner of the estate declared his intention that such fine or recovery should enure or operate to the use of a third person, a use immediately arose to such third person out of the seisin of the cognizee or recoveror; and the statute of uses transferred the actual possession to such use, without any entry on the part of such third person. The deed by which the owners of estates so declared their intention with regard to the lands thus conveyed was termed either a deed to *lead the uses*, or a deed to *declare the uses*; when executed *prior* to the levying the fine, or suffering the recovery, it bore the former appellation; when executed *subsequently* thereto, it bore the latter. See 1 *Cr. Dig.* 396, *edit.* 3*rd*; 4 *ib.* 129, 131. See also tit. *Use*.

LEADING CASE. Amongst the various cases that are argued and determined in the courts, some from their important character have demanded more than usual attention from the judges, and from this circumstance are frequently looked upon as having settled or determined the law upon all points involved in such cases, and from the importance they thus acquire are familiarly termed "leading cases." Such, for instance, are those cases collected in the valuable work of the late Mr. J. W. Smith, so well known to the profession under the title of "Smith's Leading Cases."

LEADING QUESTION. A question put or framed in such a form as to suggest the answer sought to be obtained by the person interrogating. A counsel is said to put a *leading question* to a witness, when instead of putting a simple interrogation, he states a proposition as though he believed it to be true, with the view of *leading* the witness into the admission of it. As, for instance, instead of asking a witness whether or not he was at Liverpool last Saturday, he would say, "I believe you were at Liverpool last Saturday?" See *Stark. on Evid. part* 2, 123.

LEASE. A lease is a conveyance of lands or tenements to a person for life, for a term of years or at will, in consideration of a return of rent or other recompense. The person who so conveys such lands or tenements is termed the *lessor*; and the person

to whom they are conveyed the *lessee*: and when a lessor so conveys lands or tenements to a lessee, he is said to lease, demise, or let them. — 4 *Cruise*, 58; 2 *Bl.* 317.

LEASE AND RELEASE. A species of conveyance commonly in use for conveying the fee-simple or absolute property in lands or tenements from one person to another. In the reigns of Hen. 6 and Edw. 4, it was not unusual to transfer freehold estates in the following manner. A deed of lease was made to the intended purchaser for three or four years; and after he had entered into possession, a deed of release of the inheritance was executed to him, which operated by enlarging his estate into a fee-simple. When it was found that the statute of uses transferred the actual possession without entry, the idea of a lease and release was adopted. This kind of conveyance was thus contrived. A lease, or rather bargain and sale upon some pecuniary consideration for one year was made by the tenant of the freehold to the lessee or bargainee, i. e. to the person to whom the lands are to be conveyed: now this made the vendor stand seised to the use of the lessee or bargainee, and vested in the latter the *use* of the term for a year, to which the statute of uses immediately transferred the possession. Thus the bargainee, by being in possession, became immediately capable of accepting a *release* of the freehold and reversion (which *must* be made to a tenant in possession), and accordingly a release was made to him, dated the day next after the day of the date of the lease for a year, which at once transferred to him the freehold. Although it has been endeavoured to give as clear a description of this kind of conveyance as possible, yet the reader who is unacquainted with the nature of the statute of uses cannot possibly understand it; he is therefore referred to title *Use* in this Dictionary.—4 *Cruise*, 123; *Preston's Convey.* 207; 2 *Bl.* 339. The lease for a year is now, by the authority of a recent statute, dispensed with, and the release is the only deed executed between the parties, and, by virtue of this statute, has the same efficacy as the lease and release formerly had.

LEET. See tit. *Court Leet.*

LEGACY (*legatum*). A legacy is a gift or bequest to a person of money, goods, or other personal property by testament; and the person to whom a legacy is so given is termed a *legatee*; and when the subject-matter of such a bequest consists of the *residue* of the testator's effects after payment of debts and other legacies, &c. he is then termed a *residuary legatee.*—*Toller*, 299; 2 *Bl.* 512.

LEGAL ESTATE. See tit. *Estate.*

LEGAL MEMORY. This, as distinguished from *living* memory, extends as far back as the year of our Lord 1189. See also tit. *Memory of Man*; also tit. *Time out of Mind.* See also *Co. Lit.* 114 *b*; 2 *Inst.* 238; 2 *Ves. sen.* 511; 2 & 3 *Wm.* 4, *c.* 71, *s* 1.

LEGATORY (*legatarius*). A legatee. See tit. *Legacy.*

LEGATEE. See tit. *Legacy.*

LEGERGILD (*lagergildum*). See tit. *Lairwite.*

LEGITIMATION (*legitimatio*). The making legitimate or lawful; as where children are born bastards, the act by which they are made legitimate is called *legitimation*; which in Scotland may be effected by the sub-

sequent marriage of the parents.—*Cowel; Tomlins.*

LEIRWIT. See tit *Lairwite.*

LEPROSO AMOVENDO. An old obsolete writ that lay for the removal of a leper or lazar, who obtruded himself upon the company of his neighbours either in the church or other public place of meeting in a parish.—*F. N. B.* 423; *Les Termes de la Ley.*

LE ROY LE VEUT (*the king wills it*). The royal assent to public bills is given in these words; and to private bills, the words are *soit fait comme il est desiré*, i. e. let it be done as it is desired. But when the royal *denial* is given to a bill presented by parliament, the words in which it is conveyed are *le roy s'avisera*, i. e. the king will advise upon it.—1 *Bl.* 184.

LESSOR and LESSEE. See tit. *Lease.*

LESSOR OF THE PLAINTIFF. The lessor of the plaintiff, in an action of ejectment, is the party who really and in effect prosecutes the action, and is interested in its result. He must, at the time of bringing the action, have the legal estate, and the right to the possession of the premises sought to be recovered.—7 *Term Rep.* 47; 2 *Burr.* 668; 8 *Term Rep.* 2; 1 *Ch. Pl.* 187. The reason of his being called the "lessor of the plaintiff" arises from the circumstance of the action being carried on in the name of a nominal plaintiff (called John Doe), to whom he (the real plaintiff) has granted a fictitious lease, and thus has become his lessor. For a further explanation see tit. *Ejectment.*

LET. Hindrance, molestation, or interruption. Thus, in the common covenant in leases for quiet enjoyment, the lessor covenants for himself, his heirs, executors and administrators, that the lessee shall be allowed to enjoy the premises without any lawful "*let*," suit, trouble, molestation, eviction, &c. from him the lessor, or from any one claiming under him. The word, at one time, appears to have been less a *vocabulum artis* than it is at present. Thus, in Shakspeare, Hamlet is represented as saying, "Unhand me, gentlemen, or, by Heaven, I'll make a ghost of him that *lets* me;" i. e. hinders or molests me.

LET TO MAINPRISE. An obsolete phrase, which seems to have been nearly synonymous with the modern term, "let out on bail."—*Dyer*, 272. See also tit. *Mainprise.*

LETTERS MISSIVE (from *mitto*, to send). A letter missive for electing a bishop, is a letter which the king sends to the dean and chapter, together with his usual license to proceed to elect a bishop on the avoidance of a bishopric, which letter contains the name of the person whom he would have them elect. *A letter missive in Chancery* is a letter from the Lord Chancellor to the defendant in a suit in equity, informing him that the bill has been filed against him, and requesting him to appear to it. Such a letter is the step taken in a Chancery suit to compel a defendant's appearance to a bill when such defendant is a peer or peeress: being thought a milder or more complimentary mode of procedure than serving such a defendant with a subpœna in the first instance.—1 *Bl.* 379; 3 *Bl.* 445; *Gray's Ch. Pract.* 47.

LETTER OF ATTORNEY. See tit. *Power.*

LETTERS CLOSE or CLAUSE (*literæ clausæ*). See tit. *Letters Patent.*

LETTERS OF ADMINISTRATION. The instrument by virtue of which administrators derive their title and authority to have the charge or administration of the goods and chattels of a party who dies intestate. The ordinary is the person whom the law in the first instance appoints to have the charge or administration of the goods and chattels of a party dying intestate; and the persons who are called administrators are the officers of the ordinary, appointed by him in pursuance of the statute 13 Edw. 1, stat. 1, c. 19. Sometimes, however, letters of administration are granted when a party has actually made a will, but has omitted to appoint any executor, and is therefore said to be *quasi intestatus*; or when, having made a will and appointed an executor, the executor die before the testator, or before he has proved the will, or refuse to act, or is incapable of acting; and in all such cases the administration is granted *with the will annexed*; and the letters of administration are thence termed *letters of administration with the will annexed*. *See* 1 *Wms. Exc.* 348; *Rog. Ecc. Law*, 949, 957.

LETTERS OF ADMINISTRATION WITH WILL ANNEXED. See title *Letters of Administration*.

LETTER OF LICENSE. A letter or written instrument given by creditors to their debtor who has failed in trade, &c., allowing him longer time for the payment of his debts, and protecting him from arrest in the meantime.—*Tomlins*.

LETTERS OF MARQUE. See tit. *Marque* and *Reprisal*.

LETTERS OF REQUEST. Are the formal instrument by which an inferior judge of ecclesiastical jurisdiction *requests* the judge of a superior court to take and determine any matter which has come before him. And this he is permitted to do in certain cases by the authority of an exception to the st. 23 H. 8, c. 9, which exception is to the effect, that a person may be cited in a court out of his own diocese, when "any bishop or other inferior judge, having under him jurisdiction in his own right, or by commission, make *request* or instance to the archbishop or bishop, or other superior, to take, hear, examine, or determine the matter before him; but this is to be done "in cases only where the law, civil or canon, doth affirm execution of such request of jurisdiction to be lawful and tolerable." Upon this exception it has been held that the Dean of the Arches is bound *ex debito justitiæ* to receive letters of request in matrimonial suits without the consent of the party proceeded against. But this power of requesting the decision of a superior court is generally employed at the desire of the parties.—*Rogers's Ecc. Law*, 789; 2 *Lee*, 312, 319; *Hob.* 185.

LETTERS OF SAFE CONDUCT. See tit. *Safe Conduct*.

LETTERS PATENT (*literæ patentes*). Letters by which the king makes his grants, whether of lands, honors, franchises, or any thing else; they are so called, because they are not sealed up, but are exposed to open view, with the great seal pendant at the bottom; and they are usually directed or addressed by the king to all his subjects at large; and herein they differ from certain other letters of the king, sealed also with his great seal, but directed to particular persons, and for particular purposes; which, therefore, not being proper for public inspection, are *closed up* and sealed on the outside, and are therefore called letters *close* (*literæ clausæ*), and are recorded in the *close rolls* in the same manner as

the others are in the *patent rolls*.—2 *Bl.* 346.

LEVANT AND COUCHANT (*rising up and lying down*). These words are thus used by law writers: "If lands were not sufficiently fenced so as to keep out cattle, the landlord could not distrain them till they had been *levant* and *couchant* on the land; that is, *had been long enough there to have lain down and risen up to feed*, which in general is held to be one night at least.—1 *Bl.* 8; *Gilb. Dist.* 47.

LEVARI FACIAS. A writ of execution directed to the sheriff, commanding him to *levy* or make of the lands and chattels of the defendant the sum recovered by the judgment; excepting in the case of outlawry, however, this writ has been completely superseded in practice by the writ of *elegit*. — 1 *Arch. Pract.* 603; *Tidd.*

LEVARI FACIAS DAMNA DE DISSEISITORIBUS. A writ directed to the sheriff for the levying of damages, wherein the *disseisor* has formerly been condemned to the *disseisee*.—*Reg. Orig.* 214.

LEVARI FACIAS QUANDO VICECOMES RETURNAVIT QUOD NON HABUIT EMPTORES. A writ commanding the sheriff to sell the goods of the debtor which he had already taken (but returned that he could not sell them), and as many more of the debtor's goods as are necessary to satisfy the whole debt.—*Reg. Orig.* 300.

LEVARI FACIAS RESIDUUM DEBITI. A writ directed to the sheriff, commanding him to levy the *residue* or remnant of a debt upon the lands, tenements, or goods of the debtor who had *in part* satisfied it before.—*Reg. Orig.* 299.

LEVY (*levare*). To exact, to raise, to collect, to gather together, &c. Thus, a sheriff is commanded by a writ to *levy* a certain sum upon the goods and chattels of the debtor, i. e. to collect a certain sum by appropriating the goods and chattels to that purpose.

LEVYING A FINE. See tit. *Fine.*

LEX AMISSA. See *Lawless Man.*

LEX FORESTÆ. See tit. *Forest Law.*

LEX LOCI CONTRACTUS. The law of the place or country where the contract was made.

LEX MERCATORIA. See tit. *Law Merchant.*

LEY. The old French word for *law*. It also sometimes signifies a *rate*. See tit. *Church Ley.*

LIBEL (*libellus*). This word is commonly used in two senses. 1st. It signifies a slander, or a malicious defamation of any person expressed otherwise than by mere words, as by writing, print, figures, signs, pictures, or any other symbols. Malice is an essential requisite to constitute writing a libel, and the truth of defamatory writings is no justification of it so far as respects criminal prosecutions. 2nd. The word *libel* is used in the Ecclesiastical Courts to signify articles drawn out in a formal *allegation* to set forth the complainant's ground of complaint.—*Burn's Ecc. Law*; 3 *Chit. Crim. Law.*; 2 *Camp.* 512.

LIBERA CHASEA HABENDA. A judicial writ granted to a man for a *free chase* belonging to his manor, after he had by a jury proved it to belong to him.—*Reg. of Writs*, 26, 37.

LIBERA PISCARIA. A free fishery.—2 *Salk.* 637.

LIBERATE. A warrant issuing out of Chancery under the great seal to the treasurer, chamberlains, and barons of the Exchequer, &c. for the payment of any yearly pension or other sum of money granted under the great seal. Sometimes it is directed to the sheriff for the delivery of land or goods taken upon forfeiture of a recognizance; and sometimes to a gaoler for the delivery of a prisoner who has put in bail for his appearance; but it is most in use for the delivery of goods on an extent.—*Les Termes de la Ley.*

LIBERTATE PROBANDA. See tit. *Nativo habendo.*

LIBERTATIBUS ALLOCANDIS. A writ that lay for a citizen or burgess of any city or borough, who, contrary to the liberties of the city or town to which he belonged, was impleaded before the king's justices, or justices errant, or justice of the forest, to have his privilege allowed.—*Reg. Orig.* 262; *Cowel.*

LIBERTATIBUS EXIGENDIS IN ITINERE. A writ whereby the king commanded the justices in *eyre* to admit an attorney for the defence of another man's *liberty* before them.—*Cowel.*

LIBERTY. See tit. *Franchise.*

LIBERTY TO HOLD PLEAS. The liberty of having a court of one's own: thus it is said certain lords had the privilege of *holding pleas* within their own manors, i. e. they had the privilege of having a court of their own within their manors.

LICENSE TO ARISE (*licentia surgendi*). A liberty formerly given by the court to a tenant who was essoigned *de malo lecti* in a real action, to *arise* out of his bed.—*Horne's Mirr.*

LICENTIA CONCORDANDI. Leave to agree the suit. See tit. *Fine.*

LICENTIA SURGENDI. See tit. *License to arise.*

LICENTIA TRANSFRETANDI. A writ or warrant granted to the keepers of the port of Dover, or other sea port, commanding them to let any one pass unmolested beyond sea, who has previously obtained the king's license.—*Reg. Orig.* 193.

LIE, *To.* To subsist, to exist, to be sustainable, &c. Thus an action will not *lie*, signifies that an action cannot be sustained; that there is no ground upon which to found the action. The word is curiously used in the following passage in the Mod. Rep.: "Why may not hunting *lie* in continuance as well as the feeding of cattle."—*Per Powell, J., in Monckton v. Ashly and others*, 6 *Mod. Rep.* 39, 39. The meaning of the passage would appear to be simply this, viz. why may it not be alleged of hunting that it is a continuing act, as well as the act of feeding of cattle; or why is not hunting capable of subsisting or existing in continuance (i. e. for an indefinitely extended period) as well as the act of feeding cattle). See also *Jones* v. *Mansel, Dougl.* 304. As to the meaning of the phrases to *lie in grant* and *lie in livery*, see tit. *Lying in Grant.*

LIE IN GRANT, *To.* See title *Lying in Grant;* also tit. *Lie.*

LIE IN LIVERY, *To.* See title *Lying in Grant;* also tit. *Lie.*

LIEN (from the Fr. *lier*, to bind, to fasten, &c.) A qualified right or property which a person has in or to a thing, arising from such person's

having a claim upon the owner of such thing. Thus the right which an attorney has to keep possession of the deeds and papers of his client until such client has paid his attorney's bill, is termed the attorney's *lien* upon those deeds, papers, &c. There are two sorts of *lien*, viz. *particular* and *general*. A particular lien is the right which a person has to retain the specific thing itself in respect of which the claim arises; a general lien is the right which a person has to retain a thing, not only in respect to demands arising out of the thing itself so retained, but also for a general balance of account arising out of dealings of a similar nature.—*Les Termes de la Ley; Smith's Merc. Law.*

LIEU CONUS. A well known place; as a castle, manor, &c.—2 *Mod. Rep.* 48, 49.

LIFE ESTATE. See tit. *Estate.*

LIFE RENT. A rent payable to, or receivable by a man for the term of his life.—*Skene.*

LIGAN. See tit. *Lagan.*

LIGEANCE, LIGEANCY (*ligentia*). See tit. *Allegiance;* also *Fealty.*

LIGNAGIUM (from the Lat. *lignor*, to get fuel). The right which a person has to cut or gather fuel out of woods; sometimes it is said to signify a pecuniary payment due for the same.—*Cowel.*

LIMIT, *To.* To mark out, to define, to fix the extent of. Thus, to limit an estate, means to mark out or to define the period of its duration; and the words employed in deeds for this purpose are thence termed *words of limitation;* and the act itself is termed *limiting* the estate. Thus, if an estate be granted to A. for the term of his natural life, the words *term of his natural life* would be the *words of limitation*, and the estate itself would be said to be *limited* to A. for that period. The following passage from an excellent elementary work furnishes a good illustration of the use of the term. "In every conveyance (except by will) of an estate of inheritance, whether in fee tail or fee simple, the word *heirs* is necessary to be used as a word of *limitation*, to mark out the estate." For if a "grant be made to a man *and his seed*, or to a man *and his offspring*, or to a man *and the issue of his body*, all these are insufficient to confer an estate tail, and only convey an estate for life, for want of the word *heirs*." —See *Williams's Prin. of Law of Real Property*, 109, 110.

LIMITATION (*limitatio*). Confinement within a certain time, &c. The word *limitation*, as applied to actions, signifies the space of time which the law gives a man to bring his action for the recovery of any thing; and this space of time within which a man must bring his action, in order to recover the thing sought, is *limited* by the legislature in some cases to two years, in some to six years, and so on; and the acts of parliament which prescribe these *limits* within which actions must be commenced, are thence called the statutes of *limitation*, and the subject generally is termed *limitation of actions.*

LIMITATION OF ESTATES. The word limitation, as applied to estates, signifies the *limits* of duration beyond which an estate cannot last; as when an estate is so expressly confined and *limited* by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail; as when land is granted to a man *so long as* he is parson of Dale, or *while* he continues unmarried, or *until* out

of the rents and profits he shall have made 500*l.*, and so on. In such case the estate determines as soon as the contingency happens (i. e. when he ceases to be parson, marries a wife, or has received the 500*l.*) and the next subsequent estate, which depends upon such determination, becomes immediately vested, without any act to be done by him who is next in expectancy.—2 *Bl.* 155; 1 *Inst.* 234; *Litt.* 347. See also for a further explanation of the phrase *limiting an estate*, tit. *Limit.*

LIMITATION, *Statutes of.* See tit. *Limitation.*

LIMITATION, *Words of.* See tit. *Limit.*

LIMITED ADMINISTRATION. An administration of a temporary character, granted for a particular period, or for a special or particular purpose, as distinguished from an ordinary administration, which is not granted subject to such limitations or conditions. Such, for instance, is an administration *durante minore ætate*, which becomes necessary when an infant has been appointed sole executor, or the person upon whom the right to administration devolves be an infant; in which case administration is granted to some other proper party for a *limited* period, viz. until the infant shall have attained the full age of twenty-one years, and is capable of taking the burthen of administration upon himself. See 4 *Burn's Eccl. Law*, 283; 1 *Wms. on Exec.* 401; *Reg. Eccl. Law*, 959.

LIMITED EXECUTOR. The appointment of an executor may be either absolute or qualified. It is absolute when there is no restriction, condition or limitation imposed upon him in regard to the testator's effects, or in limitation in point of time. It may be qualified by limitations as to the time or place wherein, or the subject-matter whereon, the office is to be exercised; and when so qualified, the executor is frequently, in reference to his limited or qualified powers, termed a *limited executor*. Thus, if one appoint a man to be his executor at a certain time, as at the expiration of five years after his death, or at an uncertain time, as upon the death or marriage of his son, such an executor, with reference to the time he should begin to execute his office, would be a *limited executor*. So also an executor may be a *limited executor*, with reference to the *place* in which he is empowered to execute his trust; as if a testator should make A. his executor for his goods in Cornwall, B. for those in Devon, and C. for those in Somerset. *Went. Off. Ex.* 29, 14*th edit.*; *Bro. Executors*, 2, 155, *cited in* 1 *Wms. Ex.* 181.

LIMITING AN ESTATE. See tit. *Limit.*

LINEAL CONSANGUINITY. That relationship which subsists between persons of whom one is descended in a direct line from another; as between son, father, grandfather, great-grandfather, and so on upwards in the direct ascending line, or downwards in the direct descending line. —2 *Bl.* 203.

LINEAL DESCENT. Descent in a right line: as where an estate descends from ancestor to heir in one line of succession.—2 *Bl.* 203.

LINEAL WARRANTY. See tit. *Collateral Warranty.*

LIQUIDATED DAMAGES are damages, the amount of which is fixed or ascertained, as opposed to unascertained or uncertain damages. It is frequently mutually agreed between the parties to a contract, that the one

shall pay to the other a specified sum of money, in the event of a breach of its provisions; and in such case, it frequently becomes a nice question whether such sum is to be considered in the nature of a *penalty* merely for the purpose of covering the damages which one party may sustain in the event of a breach committed by the other, or whether the full sum specified is to be actually paid to the injured party as *liquidated* or *settled* damages, without reference to the extent of the injury sustained. See *Kemble* v. *Farren*, 6 *Bing.* 141; *Reilly* v. *Jones*, 1 *Bing.* 302; *Ch. on Contr.* 863, 864.

LIS PENDENS. A pending suit or action. The phrase is frequently used in the ablative case—*pendente lite*, i. e. during the continuance of the suit. Thus when the right of administration, or to an executorship, is in contest in the spiritual court, it is competent to the ordinary to appoint an administrator *pendente lite*.—*Rog. Eccl. Law*, 960.

LITIGIOUS. A church is said to become *litigious* when several persons pretend to have a title to the advowson, and on an avoidance of the same, each presents his clerk to the ordinary for admission; in which case, if nothing farther be done, the bishop may refuse the admission of any of them, and suffer a lapse to take place. *Burn's Eccl. Law*; 3 *Bl.* 246; *Co. Lit.* 186 *b*; *Rog. Eccl. Law*, 19.

LIVERY (Fr. *liverer*, to deliver). During the existence of the feudal tenures and customs, the male heir, when he arrived at the age of twenty-one years, or the heir female at sixteen, might sue out a writ of *livery* or *ouster le main*; that is, the *delivery* of their lands *out of their* guardians' *hands*; for in the feudal times the lord was entitled to the *wardship* of the heir, and was called the *guardian* in chivalry. This wardship consisted in having the custody of the body and lands of such heir, without any account of the profits, till such heir attained the age of twenty-one, if a male, or sixteen if a female.—2 *Inst.* 203; 2 *Bl.* 68.

LIVERY, *Lying in.* See tit. *Lying in Grant.*

LIVERY OF SEISIN (*liberatio seisinæ*). Delivery of possession. Formerly when an estate of freehold was conveyed from one party to another, it was necessary, in order to render such conveyance valid, to accompany it with the ceremony of *livery of seisin*, that is, the actual *delivery of possession* of the lands; this, however, being frequently inconvenient, a symbolical *delivery of possession* was in many cases anciently allowed; as by transferring something near at hand, in the presence of credible witnesses, which by agreement should serve to represent the very thing designed to be conveyed; and an occupancy of this sign or symbol was permitted to be equivalent to the occupancy of the land itself. Livery of seisin is said to be either in *deed* or in *law*. Livery in deed is an actual entry on the land, and is performed thus: The person who conveys the land, together with the person to whom it is to be conveyed, come to the land or to the house; and there in the presence of witnesses declare the contents of the conveyance on which livery is to be made; and then he who conveys (if the subject of such conveyance is land) delivers to the party to whom he conveys (all other persons being out of the ground) a clod of turf, or a twig or bough there growing, with words to this effect: "I deliver these to you in the name of seisin of all the lands and tenements contained in this deed." But if it be a house, the person who conveys must take the ring or latch of

the door (the house being quite empty) and deliver it to the party to whom he conveys, in the same form, &c. Livery in *law* is such a livery as is not made *on* the land, but in *sight of it*, the party who conveys saying to the party to whom he conveys, "I give you yonder land, enter and take possession;" and in this case if he enters during the life of the other party, it is a good livery, but not otherwise.—*Co. Litt.* 42, 48, 52; 2 *Bl.* 315; *Williams's Real Property.*

LOCAL ACTION. An action is termed *local* when all the principal facts on which it is founded are of a local nature; as where possession of land is to be recovered, or damages for an actual trespass, or for waste affecting land, or for any other kind of injury affecting real property; because in such case the cause of action relates to some particular locality,—*Stephen on Pleading.*

LOCAL ACT OF PARLIAMENT. Such an act as has for its object the interests of some particular locality; as the formation of a road, the alteration of the course of a river, the formation of a public market in a particular district, &c.—See 1 *Mee. & W.* 520.

LOCUS IN QUO. *The place in which* the cause of action arose, or where any thing is alleged to have been done, in pleadings is so called.—1 *Salk.* 94.

LONDON AND MIDDLESEX. The city of London, though geographically situated within the county of Middlesex, is in law regarded as a distinct county of itself, and has sheriffs of its own, to whom all writs to be executed within the city must be addressed. So also the courts hold distinct sittings for the trial of causes in the two counties, viz. for the Middlesex causes at Westminster Hall, and for the London causes at the Guildhall. Hence if it be intended to try any given cause at the sittings in London, the venue must be laid in London, in the same way in all respects as in any other county.

LOQUELA. An imparlance.—*Cowel.*

LORD DENMAN'S ACT. See tit. *Denman's Act.*

LORD MAYOR. The chief officer of the corporation of the city of London is so called. The origin of the appellation of "lord," which the mayor of London enjoys, is attributed to the fourth charter of Edward III., which conferred on that officer the honour of having maces, the same as royal, carried before him by the serjeants. He is annually nominated and elected by the livery from amongst such of the aldermen as have served the office of sheriff. In his character of chief magistrate of the city, the lord mayor presides at the court of aldermen in the inner chamber, the court of common council, and the court of common hall; and, as such, issues his precept for the holding of any of these courts. He is also nominally president of the court of aldermen in the outer chamber (or lord mayor's court). He is chairman of every committee which he attends; also of the commissioners of sewers, and has power to summon them to a public meeting whenever he thinks proper.—11 *Geo.* 3, *c.* 29, *s.* 6. The corporation provide the lord mayor with the mansion-house, which they keep in repair at their own expense, and annually grant a sum of money amounting to nearly 8,000*l.*, and also provide various officers at their own expense to support the dignity of the office.—*Pulling's Laws and Customs of the City and Port of London*, 16 *m*, 23, 2*nd ed.*

LORD MAYOR'S COURT. This is a court of record, of law and equity, and is the chief court of justice within the corporation of London. Its legal style is "The Court of our Lady the Queen, holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London." In legal consideration and in conformity with the style of the court, the lord mayor and aldermen are supposed to preside; but the recorder is *in fact* the acting judge. All persons, as well freemen as non-freemen, not being under any general incapacity which would disable them from suing in the superior courts at Westminster, may sue in this court. As a court of common law it has cognizance of all personal and mixed actions arising within the city and liberties, without regard to the amount of the debt or damages sought to be recovered; and if the *gist* of the action arise within the city, the residence of the plaintiff or defendant therein is immaterial.—*Emmerson's City Courts; Pulling's Laws and Customs of the City and Port of London*, 177, *2nd edit.*

LORD IN GROSS. He who is a lord, not having a manor; as the king in respect of his crown.—*Les Termes de la Ley.*

LORD OF A MANOR. See tit. *Manor.*

LORDS SPIRITUAL and TEMPORAL. The lords spiritual compose one of the constituent parts of our parliament, and consist of two archbishops and twenty-four bishops; and by the act of union with Ireland, 39 & 40 Geo. 3, c. 67, four Irish lords spiritual, taken from the whole body by rotation of sessions, have been added, who rank next after the spiritual lords of Great Britain. The *lords temporal* consist of all the peers of the realm, by whatever title of nobility distinguished, and form another constituent part of our parliament.—1 *Bl.* 156.

LORD AND VASSAL. The fundamental maxim of all feudal tenure is this: that all lands were originally granted out by the sovereign, and are therefore holden either mediately or immediately of the crown. The grantor was called the proprietor or *lord*, being he who retained the dominion or ultimate property of the feod or fee; and the grantee, who only had the use and possession, according to the terms of the grant, was styled the feudatory or *vassal*, which was only another name for the tenant or holder of the lands.—2 *Bl.* 53.

LOT. Certain duties, tolls, assessments or impositions are frequently so termed. See titles *Lot and Cope; Lot and Free Share;* and *Lot and Scot.*

LOT AND COPE. Certain duties paid to the lessee of lead mines, by the adventurers or workers of those mines. In the case of *Rowls* v. *Gells et al. Cowp.* 451, the duty of lot was stated to be the thirteenth dish or measure of lead ore got, dressed and made merchantable at all the lead mines within the soak or wapentake of Wirksworth, in the county of Derby; and that *cope* was 6*d.* for every load or nine dishes of lead ore *raised* at such mines.—*Cowp.* 451.

LOT AND FREE SHARE. By the custom of the manor of Rowberrow, in the county of Somerset, the lord was entitled to one part in four of all calamine raised within the manor, which was termed his *lot*, toll, or *free share.*—1 *M. & Sel.* 612.

LOT AND SCOT (Sax. *llot*, a chance or lot, and *sceat*, a part or portion). Certain duties which must be paid by those who claim to exercise the

elective franchise within cities and boroughs, before they are entitled to vote. It is said that the practice is now uniform, to refer to the *poor rate* as a register of "scot and lot" voters; so that the term, at present, when employed to define a right of election, means *only the payment by a parishioner* of the sum to which he is assessed on the rate.—*Rog. on Elec.* 198, *6th edit.*; 1 *Dougl.* 129.

LOTHERWITE. See tit. *Lairwite.*

LURGULARY. The offence of throwing any corrupt or poisonous thing into the water.—*Cowel.*

LYEF-YELD, LEF-SILVER. A small fine, mulct, or pecuniary composition paid by the customary tenant to the lord, for leave to plough or sow.—*Somner on Gavelk.*

LYING IN GRANT. Being the subject-matter of a *grant*, as distinguished from that which is the subject-matter of *delivery*. Property may be said to be of two kinds, *corporeal* and *incorporeal*: the former are such as are of a material, tangible, and substantial character, and may be perceived by the senses; such, for instance, as houses, lands, woods or castles; the latter, on the contrary, are of an abstract nature, such, for instance, as an annuity, which is the *right* to the payment of an annual sum of money; or an advowson, which is the right of presentation to a church. The characteristic feature to these two kinds of property led to an important distinction with regard to their mode of conveyance. Hereditaments of a *corporeal* nature were usually conveyed by what was termed a deed of feoffment, accompanied by an actual *delivery of possession*, or, as it was technically called, *livery of seisin*; whilst hereditaments of an *incorporeal* character, being from their very nature incapable of a tangible delivery, were conveyed simply by deed, in which the word *grant* occurred amongst the operative words of conveyance. Hence corporeal hereditaments were said to lie in *livery*, whilst incorporeal hereditaments were said to *lie in grant*.—See *Williams's Law of Real Property*, 177.

LYING IN LIVERY. See title *Lying in Grant.*

M.

MACEGRIEFS (*macegrarii*). Those who willingly buy and sell stolen flesh, knowing the same to be stolen. —*Cromp. Juris.* 193.

MAGNA ASSISA ELIGENDA. A writ directed to the sheriff, commanding him to summon four lawful knights before the justices of assize, upon their oaths to choose twelve knights of the vicinage, &c. to pass upon the great assize between a plaintiff and a defendant.—*Les Termes de la Ley*; *Reg. Orig.* 8.

MAGNA CHARTA. The great charter of English liberties granted by, or rather extorted from, King John, and afterwards, with some alterations, confirmed in parliament by Henry the Third. It was called *magna charta* on account of its *great* importance, and partly in contradistinction to another charter (*carta de foresta*) which was granted about the same time.—4 *Bl.* 423.

MAIDEN ASSIZE. When, at the assizes, no person has been condemned to die, it is termed a "Maiden Assize."

MAIDEN RENTS. A fine paid by the tenants of some manors on their marriage, being a sort of composition with the lord for agreeing to omit the custom of *marcheta*, which

was for the lord to lie the first night with the bride of his tenant. Some say that it was a fine paid to the lord for a license to marry a daughter.—*Cowel.*

MAIHEM or MAYHEM (*mahemium.*) The violently depriving another of the use of such of his members as may render him the less able, in fighting, either to defend himself, or to annoy his adversary: as the cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye or fore tooth, or depriving him of those parts the loss of which in all animals abates their courage, are considered as mayhems: hence, to do a person such an external injury as merely detracts from his personal appearance is not considered as mayhem, because it does not weaken him, but only disfigures him. —1 *Hawk. c.* 44; 4 *Bl.* 205.

MAIM. See tit. *Maihem.*

MAINOVRE, MAINŒUVRE (from the Fr. *main*, hand, and *œuvre*, work). Any trespass committed by a man's hand.—*Britt.* 62.

MAINOUR or MEINOUR (from the Fr. *manier*, to handle). The thing that a thief takes away and steals: thus, to be taken with the *mainour*, signifies to be taken with thing stolen about him.—*Pl. Cor.* 179, 194; *Cowel.*

MAINPERNABLE. See tit. *Mainprise.*

MAINPERNORS. See tit. *Mainprise.*

MAINPRISE (from the Fr. *main*, hand, and *prendre*, to take). One of the means of removing the injury of false imprisonment was by a writ called a writ of *mainprise*, directed to the sheriff (either generally, when any man was imprisoned for a bailable offence, and bail had been refused; or specially, when the offence or cause of commitment was not properly bailable below), commanding him to take sureties for the prisoner's appearance, usually called *mainpernors*, and to set him at large. *Mainpernors* differ from bail, in that a man's bail may imprison or surrender him up before the stipulated day of appearance; whereas *mainpernors* can do neither, but are simply sureties for his appearance at the day; bail are only sureties that the party be answerable for the special matter for which they stipulate; *mainpernors* are bound to produce him to answer all charges whatsoever. The word *mainprise* is used in various ways; thus, when a man is committed to those who undertake he shall appear at the appointed day (i. e. to his *mainpernors*), he is said "to be let to mainprise;" and a man who may be so *mainprised* or delivered to *mainpernors* is said to be *mainpernable.* Where an offence was not bailable, the justices were frequently, by act of parliament, directed "to commit such offender or offenders to the common gaol of the county, there to remain without bail or *mainprise.*"—43 *Eliz. c.* 2, *s.* 4; *Dyer*, 272 (31); 4 *Inst.* 179; 3 *Bl.* 128.

MAINSWORN. In some of the northern districts is the same as forsworn.—*Cowel.*

MAINTAINORS. Those who support, *maintain*, or second a cause depending between parties, either by assisting them with money, or by making friends for either party for his assistance.—19 *Hen.* 7, *c.* 14.

MAINTENANCE (*manutenentia*). An offence bearing a near relation to *barretry* and consists in officiously intermeddling in a suit that in no way belongs to one, as by maintain-

ing or assisting either party with money, or otherwise taking great pains to assist the plaintiff or defendant in the suit, although having nothing to do with it.—*Les Termes de la Ley*; 4 *Bl.* 135; *Findon* v. *Parker*, 11 *Mes. & W.* 675.

MAJUS JUS. A writ or law proceeding in some customary manors when a right to land is to be tried.—*Cowel.*

MAKE (*facere*). In law signifies to execute, to perform, to do. Thus, to make his law, signifies to perform that law which he had previously bound himself to; to *make services or custom* signifies to perform such services or custom.—*Old Nat. Brev.* 14; *Cowel.*

MAKING UP DEMURRER BOOK. See tit. *Demurrer Book.*

MALA IN SE (*bad in itself*). All things which are evil in themselves are so termed, in contradistinction to those things which are not evil in themselves, but are only forbidden by the laws, and which are therefore called *mala prohibita*, or forbidden evils.—1 *Bl.* 54, 57.

MALA PROHIBITA. See tit. *Mala in se.*

MALECREDITUS. One who is suspected and cannot be trusted.—*Fleta, lib.* 1, *c.* 8.

MALEFEASANCE (from the Fr. *mal-faire*, to do mischief). A transgression or the doing anything wrong.—2 *Croke's Rep.* 266.

MALESWORN. The same as *mainsworn*, which see under that title.

MALICE (*malitia*). In its legal sense, this word does not simply mean ill will against a person; but signifies a wrongful act, done intentionally, without just cause or excuse. Thus, if I intentionally and without just cause or excuse give a perfect stranger a blow likely to produce death, I should, in legal contemplation, do it of *malice*, because I did it intentionally, and without just cause or excuse. So, if I maim cattle, even without knowing whose they are, I should, in legal construction, do it of *malice*, because it would be a wrongful act, and be done intentionally. — See *per Bayley, J., in Bromage* v. *Prosser*, 4 *B. & C.* 255.

MALICE PREPENSE (from the Lat. *malitia*, malice, and the Fr. *penser*, to think, and *pre*, beforehand). Malice aforethought, i. e. deliberate, predetermined malice.—2 *Roll. Rep.* 461.

MALVEILLES. See tit. *Malefeasance.*

MALVEIS PROCURORS. Those who used to pack juries by nomination, or otherwise, were so called.—2 *Inst.* 561.

MALUM IN SE. See tit. *Mala in se.*

MANAGERS OF CONFERENCE. The managers of a conference between the houses of parliament are the members of the committee who draw up the reasons for disagreeing or dissenting on the part of one house from the amendments made in any bill or bills by the other.—See tit. *Conference.*

MANBOTE (Sax.) A pecuniary compensation for killing a man. This was due to the lord when any one had killed his vassal.—*Lambert.*

MANCIPLE (*manceps*). The steward of the Inner Temple was formerly so called.—*Cowel.*

MANDAMUS (we command). A *mandamus* is a writ which issues in the king's name out of the Court of King's Bench, *commanding* the completion or restitution of some right. The power of issuing writs of *mandamus* is one of the highest and most important branches of the jurisdiction of the Court of King's Bench, and in general belongs exclusively to that court; and it may be compared to a bill in equity for a specific performance. It is used principally for public purposes, and to enforce the performance of public rights or duties. A writ of mandamus, however, does operate in affording specific relief and enforcing some *private rights* when they are withheld by a *public officer*, and though principally for the admission or restitution to a public office, yet it extends to other rights of the person or property. A *mandamus* is not generally granted by the court, excepting when the party applying for it has no other specific remedy. It issues to compel a removed clerk to deliver up books of a public corporate company; to compel overseers to deliver up parish books to their successors; to compel a lord and steward of a copyhold manor to admit the tenant: it also issues to inferior courts and judges thereof, and justices of peace and other public functionaries, to compel them to proceed according to their respective duties. There was also a *mandamus* formerly much in use which issued to the escheator for the finding of an office after the death of one who had died the king's tenant, and was the same as the writ of *diem clausit extremum*, excepting that the *diem clausit extremum* went out within the year after the death, whereas the mandamus did not go out till after the year, and when no *diem clausum fregit* had previously been sued out, or had been sued out to no effect.—1 *Chit. Gen. Pract. of the Law; Les Termes de la Ley;* 3 *Bl.* 110.

MANDATE (*mandatum*). A contract by which one employs another to act for him in the management of his affairs, or in some particular department of them, of which employment the person accepts and agrees to act. He who so gives the employment is called the *mandant*, and he who accepts it the *mandatory*. See *Bell's Sc. Law Dict.* and *Doorman* v. *Jenkins*, 4 *Nev. & Man.* 170. The word was also sometimes used to signify a judicial command of the king or any of his justices to have anything done for the benefit and dispatch of justice, and appears to have been somewhat analogous to the writ of *mandamus*.—*Cowel.*

MANDATORY or MANDATARY. See tit. *Mandate.*

MANNER. See tit. *Mainour.*

MANNER AND FORM (*modo et forma*). Formal words introduced at the conclusion of a traverse; and their object is to put the party whose pleading is traversed, not only to the proof that the matter of fact denied is in its general effect true as alleged, but also that the *manner and form* in which the fact or facts are set forth are also capable of proof. Thus in an action of assumpsit, where the plaintiff sets out an agreement in his declaration, as the foundation of the defendant's promise, and the defendant pleads generally that he did not promise in *manner and form* as alleged, he may, under the issue so raised, take advantage of any material variance between the contract so set out and that which, upon the trial, is proved to have been the actual contract between the parties. It may be as well, however, to remark, that when a traverse is pointed

to one amongst several independent allegations, it simply puts in issue the *substance* of the allegation, notwithstanding the words *modo et forma*. So in the common action of debt for goods sold and delivered, when the defendant pleads that he never was indebted in *manner and form* alleged, this traverse does not put in issue the *formal* accuracy of the plaintiff's statement, but the very *substance* of the plaintiff's declaration, viz. whether or not the defendant was ever indebted to the plaintiff in respect of the cause of action alleged.—See *Steph. Pl.* 214, 215, *4th ed.*; *Neale* v. *M'Kenzie*, 2 *Cr. M. & R.* 67; 1 *Ch. Pl.* 513.

MANNOPUS. See tit. *Mainour.*

MANOR (*manerium*). A manor seems to have been a district of ground held by great personages. It is compounded of various things, as of a mansion house, arable land, pasture, meadow, wood, rent, advowson, court baron, and such like. A manor, to be such, must have continued from time immemorial; for at the present day a manor cannot be made, because a court-baron cannot now be made, and a manor cannot exist without a court baron, and suitors and freeholders to the amount of two at the least; for if all the freeholds except one escheat to the lord, or if he purchase all except one, his manor is at once gone and dead. A manor by reputation, however, but which has ceased to be a legal manor, by defect of suitors to the court, may yet retain some of its privileges, as a preserve for game, and the lord may still appoint a gamekeeper thereto. —*Les Termes de la Ley*; *Watkins on Copyholds.*

MANSLAUGHTER. The unlawful and felonious killing of another *without malice* either express or implied; and may be either *voluntary* upon a sudden heat, as when in a sudden quarrel two persons fight and one kills the other; or when one greatly provokes another by personal violence, and the other immediately and suddenly, without malice aforethought, kills him; or 2. *Involuntary*, as when a man doing an unlawful act, not amounting to felony, by accident kills another. So that the only distinction between *manslaughter* and *murder* is, that the one is done without premeditation, and the other with.—1 *Hale*, 466; 4 *Bl.* 191.

MANUCAPTIO. A writ of the same nature as the writ of mainprise. See tit. *Mainprise.*

MANUCAPTORS. Sureties who entered into recognizances for the appearance of prisoners let out on bail. They seem to have been the same as or similar to "mainpernors" or bail.—See *st. 5 W. & M. c.* 11, *s.* 2; 1 *Burn's Justice by Chitty*, 578; *Dyer*, 272 (31).

MANUMISSION (*manumissio*). The making a bondman free, which in the feodal ages was a frequent occurrence. Manumission was either *express* or *implied*. Manumission expressed, was done by the lord granting to his villein a deed of enfranchisement. Manumission implied, was done by the lord entering into an obligation with his villein to pay him money at a certain day, or granting him an annuity, or leasing lands to him by deed for a term of years, or doing any other similar act which would *imply* that he treated with his villein upon the footing of a freeman.—*Les Termes de la Ley.*

MANU OPERA. See tit. *Mainour.*

MANUTENENTIA. A writ which lay against persons guilty of the offence of maintenance.—*Reg. Orig.* 182, 189.

MARCHETA. See tit. *Maiden Rents.*

MARESCHAL. See tit. *Marshal.*

MARITAGIO AMISSO PER DEFALTAM. A writ which lay for a tenant in frank marriage to recover lands, &c. whereof he was deforced by another.—*Cowel.*

MARITAGIUM. The right of marriage as distinguished from matrimony, which, in its feodal sense, signifies the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. It is also said to be that profit which might accrue to the lord by the marriage of one under age who held his lands of him by knight service.—*Cowel;* 2 *Bl.* 70.

MARKET (*mercatus*). In its legal signification may be defined to be the liberty or privilege by which a town is enabled to keep a market.—*Old Nat. Brev.* 149.

MARKET OVERT (*open market*). Selling goods in market overt means selling them in an open market, as opposed to selling them privately or in a *covert* place; the former kind of sale effects a change in the property of the things so sold even as against the owner; but a sale out of market overt does not. In the country, the market place or spot of ground set apart by custom for the sale of goods and wares, &c. is, in general, the only market overt. In London however, a sale in an open shop of proper goods, is equivalent to a sale in market overt; for every day, except Sunday, is a market there. So it would appear, is the case in Bristol, or elsewhere, when warranted by custom.—*Dub. Mo.* 625; 5 *Co.* 83 c; cited in *Com. Dig. tit. Market* (*E*).

MARKSMAN. A deponent in an affidavit who cannot write his name, but makes his *mark* or cross instead, is so termed.—2 *Q. B.* 520, n. (*a*); 4 *Dowl. P. C.* 765.

MARKSWOMAN. See tit. *Marksman.*

MARQUE and REPRISAL, *Letters of.* These words marque and reprisal are frequently used as synonymous; the latter signifies a taking in return; the former the passing the frontiers in order to such taking. Letters of marque and reprisal are grantable by the law of nations whenever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs; and the party to whom these letters are granted may then seize the bodies or the goods of the subjects of the offending state, until satisfaction be made, wherever they happen to be found.—*Puffendorff;* 1 *Bl.* 258, 259.

MARSHAL (*marescallus;* Fr. *mareschal*). There are several officers of this name, but those which are more particularly connected with law are, 1. The marshal of the king's house or knight marshal, whose special authority is in the king's palace, to hear and determine all pleas of the crown, and to punish faults committed within the verge, and to hear and judge of suits between those of the king's household. There are also other inferior officers bearing this title, as the marshal of the Queen's Prison, who, previously to stat. 5 & 6 Vict. c. 22, was called the marshal of the King's Bench Prison, and had the custody of the King's Bench Prison; the marshal of the exchequer, to whose custody that court commits the king's debtors for securing payment of their debts, and who also assigns sheriffs, escheators, customers, and collectors, their auditors

before whom they have to account. —*Fleta, lib.* 2, *c.* 4, 5; *Cowel.*

MARSHAL ASSETS, *To.* See tit. *Marshalling of Assets.*

MARSHALLING OF ASSETS. As it is right that every claimant upon the assets of a deceased person should be satisfied (if his claim be just) so far as that object can be effected by any arrangement consistent with the nature of the respective claims of the creditors in general; it has been long a general principle of equity that if a claimant has two funds, to which he may resort, a person having an interest in one only has a right to compel the former to resort to the other, if that is necessary for the satisfaction of both. This principle is not confined to the administration of the estate of a person deceased, but applies, wherever the election of a party having two funds will disappoint the claimant having the single fund. Thus, where A., a creditor, can resort to more than one fund of the deceased, and B., another creditor, can resort to only one, then in such case A. shall resort to that fund on which B. has no claim, and thus both will be satisfied; and this is termed *marshalling assets.* — *Toller's Exec.* 420; *Williams's Exec.* 1344, 3*d ed.*; *Fonbl. on Eq. B.* 3, *c.* 2, *s.* 6, *note* (*i*).

MARSHALSEA (*marescaltia*). The court or seat of the marshal of the king's house. This court was originally held before the steward and marshal of the king's house, and was instituted to administer justice between the king's domestic servants, in order that they might not be drawn into other courts and thus deprive the king of their services. This court has now merged into the palace court (*curia palatii*) which was erected by King Charles the First to be held before the steward of the household and knight marshal, and the steward of the court or his deputy, with jurisdiction to hold plea of all manner of personal actions which shall arise between any parties within twelve miles of the king's palace at Whitehall. The court is now held once a week, together with the ancient Court of Marshalsea, in the borough of Southwark, and a writ of error lies from thence to the Court of King's Bench. The business of this court has of late years much decreased owing to the new courts of request or conscience that have since been established. The word *Marshalsea* is also sometimes taken for the prison belonging to the Court of Queen's Bench, commonly called the Queen's Bench Prison, but by 5 Vict. c. 22, the style of it is changed to the *Queen's Prison.* See tit. *Marshalsea Prison.*

MARSHALSEA PRISON. This prison, which was also styled the prison of the marshalsea of her majesty's household, was a prison for debtors, and for persons charged with contempt of her majesty's court of the marshalsea; the court of the queen's palace of Westminster, commonly called the Palace Court, and the High Court of Admiralty; and also for Admiralty prisoners under sentence of courts martial. By the 5 Vict. c. 22, this prison, the Fleet, and the Queen's Bench, were consolidated under the title of the *Queen's Prison.* See *5 Vict. c.* 22; *6 Jur.* 254.

MARTIAL LAW. The law which is administered in courts martial. It consists of no settled code, but of the will and pleasure of the king or his lieutenant; for in the time of war, on account of the great necessity there is for guarding against dangers that often arise and which require immediate attention, the king's power is almost absolute and his word law.—*Smith de Repub. Ang. lib.* 2, *c.* 4.

MASTER (*magister*). There are various officers so termed in the law. The chief are as follow: 1st. Master in Chancery; 2d. Master of the Faculties; 3d. Master of the Rolls; 4th. Master of the Temple; 5th. Masters Extraordinary in Chancery; 6th. Masters of the Courts of Common Law. For a particular account of each see their respective titles.

MASTER IN CHANCERY (*magister cancellaria*). The masters in chancery are officers of that court whose duty it is to make inquiries (when so required by the court) into matters which from the constitution of the court it cannot conveniently without the assistance of such officers satisfy itself upon, and to *report* to the court their conclusions with respect to such matters. The duties of these masters are of a mixed character; being partly judicial, and partly ministerial, the powers which they possess in both respects being delegated to them by the court. Whenever a master has acted in obedience to the directions of the court, he informs the court by a document in writing what he has done, or what conclusion he has come to; and in most cases this document is called the *master's report*. The masters in chancery, in addition to their ordinary functions, act as messengers from the House of Lords to the House of Commons. Two attend the house in rotation each day and sit on the woolsacks; their duties consist in carrying bills to the commons which have been passed in the lords, or in conveying any message which their lordships may be desirous of communicating to the commons. On arriving at the latter house, they take their seats behind the chair of the serjeant-at-arms, and this officer, bearing the mace, walks up to the table and acquaints the Speaker that there is "a message from the lords." The Speaker says, "Let the messengers be called in;" upon which the masters in chancery, accompanied by the serjeant-at-arms, approach the table, making their obeisances, and having deposited the bills thereon, or delivered their message, they retire with the same form, walking backwards until they reach the bar of the house. There are also certain other officers of the Court of Chancery called *masters extraordinary in chancery;* these are usually solicitors, who are appointed by the court to act in the various counties of England in taking affidavits, acknowledgments of deeds, recognizances, &c. which otherwise would have to be taken before the masters in London, and thus cause the suitors time and expense in coming to London for that purpose.—*Gray's Ch. Pract.* 103; 3 *Bl.* 442.

MASTER OF THE FACULTIES (*magister facultatum*). An officer under the Archbishop of Canterbury who grants licenses and dispensations, and is mentioned in 22 & 23 Car. 2. —*Cowel.*

MASTER OF THE ROLLS (*magister rotulorum*). One of the judges of the Court of Chancery; he is so called because he has the custody of the rolls of all patents and grants which pass the great seal, and also the records of chancery. He presides in a court called the Rolls Court, and his duties are assistant to those of the Lord Chancellor.—*Cowel.*

MASTERS EXTRAORDINARY IN CHANCERY. See tit. *Master in Chancery.*

MASTERS OF THE COURTS OF COMMON LAW. Each of the superior courts of common law has five important officers attached to it termed *masters.* These gentlemen are usually persons of consideration and learning, and are not unfrequently members of the bar. One of the masters of each

court always attends the sittings of his own court in banc, and usually sits on the bench, appropriated for him and other officers, at the foot of the judicial bench. The court of error, also, is always attended by one of the masters. Their chief duties, when attending the court, consist in taking affidavits sworn in court,—in administering oaths to attorneys on their admission,—and in certifying to the court in cases of doubt or difficulty what the practice of the court is. Their principal duties out of court consist in taxing attorneys' costs,—in computing principal and interest on bills of exchange, promissory notes and other documents, under rules to compute,—in examining witnesses who are going abroad for the purpose of obtaining their testimony,—in hearing and determining rules referred to them by the court in the place of the court itself,—and in reporting to the court their conclusions with reference to the rules so referred to them.

MASTER'S REPORT. See tit. *Master in Chancery.*

MATERIAL MEN. Are a class of persons (known in the language of the Admiralty Court under that name) who supply cordage and similar *materials* for the outfit of vessels.—*Per Sir John Nicholl*, 3 *Hag. Ad. R.* 130, "*Neptune.*"

MATRIMONIUM. This word sometimes signifies the inheritance which descends to a man *ex parte matris.*—*Cowel.*

MATRONS, *Jury of.* A jury of matrons is a jury formed of women, which is impaneled to try the question whether a woman be with child or not. See tit. *De Ventre inspiciendo.*

MATTER IN DEED. See tit. *Matter of Record.*

MATTER IN PAIS. See tit. *Matter of Record.*

MATTER OF RECORD, MATTER IN DEED, and MATTER IN PAIS. Matter of record signifies some judicial matter or proceeding entered upon one of the records of a court, and of which the court takes peculiar cognizance. Thus the pleadings in an action in the superior courts, and in other courts of record, being matter which is entered upon the records of the court and filed with its officer as an authentic history of the suit, is thence termed matter of record.

Matter in deed is some private matter or thing contained in a deed between two or more parties; as the covenants or recitals in a lease, or in a mortgage deed for instance; and these, although enrolled, that is, transcribed upon the records of one of the queen's courts at Westminster, or at a court of quarter sessions, as they often are for safe custody, do not thereby become *matter of record*, but are simply deeds recorded; for there is a material difference between a matter of record, and matter recorded for the purpose of being kept in memory; a record being an entry in parchment of judicial matters or proceedings which have taken place in a court of record, and of which the court takes judicial notice, as matter coming peculiarly under its own cognizance, whereas the enrolment of a deed is a private act of the parties concerned, of which the court takes no cognizance at the time when it is done.

Matter in pais simply means matter of *fact*, probably so called, because matters of fact are triable by the *country*, i. e. by a jury. The above several phrases are generally used in connection with the subject of *estoppel*, and the following extract from the work of Mr. Serjeant Stephen may therefore serve further to illustrate their meaning. "A man is sometimes precluded in law from al-

leging or denying a fact in consequence of his own previous act, allegation, or denial to the contrary; and this preclusion is called an *estoppel*. It may arise either from matter of *record*, from the *deed* of the party, or from *matter in pais*, that is, matter of *fact*. Thus, any allegation of fact, or any admission made in pleading (whether it be express or implied, from pleading over, without a traverse), will preclude the party from afterwards contesting the truth of the matter so alleged or admitted, upon the trial of the issue in which such pleading terminates. This is an estoppel by *matter of record*. As an instance of an estoppel by *deed*, may be mentioned the case of a bond reciting a certain fact. The party executing that bond will be precluded from afterwards denying in any action brought upon that instrument the fact so recited. An example of an estoppel by matter in *pais* occurs when one man has accepted rent of another; in such case he will be estopped from afterwards denying in any action with that person, that he was, at the time of such acceptance, his tenant."—*Step. Pl.* 222, *4th ed.* See also 4 *Cru. Dig.* 503; *Dobson* v. *Dobson, Ca. Temp. Hard.* 19; *Sanderson* v. *Collman*, 4 *Sc. N. R.* 649.

MAUGRE. An old French word used by some of our law writers, signifying *notwithstanding, in spite of*, &c. It is the same as the modern French word *malgré*. It is thus used in Litt. sec. 672: "The husband and wife shall be remitted, *maugre* the husband," i. e. in despite or against the will of the husband.—*Cowel.*

MAYHEM. See tit. *Maihem.*

MEAN. See tit. *Mesne.*

MEASE (*messuagium*). A messuage or dwelling-house.—*Kitchen*, 139.

MEDIATORS OF QUESTIONS. By 27 Ed. 3, st. 2, c. 24, six persons so called were authorised when any *question* arose amongst merchants touching any unmarketable wool, or undue packing, to certify upon oath, and settle the same before the mayor and officers of the staple, and by whose award therein the parties concerned were to abide.—*Cowel.*

MEDIETAS LINGUÆ. A jury *de medietate linguæ* is a jury consisting one half of natives and the other half of foreigners, to try a cause in which either the plaintiff or defendant is a foreigner.—*Staun. Pl. Cor. lib. 3, c. 7.*

MEDIO ACQUIETANDO. A judicial writ to distrain a lord from *acquitting* a *mesne* lord from a rent which he formerly acknowledged in court did not belong to him.—*Reg. Jud. fol.* 29.

MELIUS INQUIRENDUM. A writ directed to an escheator to institute a second inquiry, when a doubt was entertained as to some partiality in the first inquiry made upon a diem clausit extremum after the death of one of the king's tenants.—*Les Termes de la Ley.*

MEMORIAL OF DEEDS. By several acts of parliament all deeds and wills concerning the conveyance or disposition of estates in the counties of York, Kingston-upon-Hull, and Middlesex (subject to certain exceptions), are required to be registered, and such registration is effected by the execution and deposit of a memorial under the hand and seal of some or one of the grantors or grantees, his or their heirs, executors or administrators, guardians or trustees; which memorial is to contain—first, the day of the month and year when the instrument bears date, the names and additions of all the parties to it, of the witnesses, and

the places of their abode; and, secondly, a description of the property conveyed, or proposed to be conveyed or disposed of, the names of the parishes wherein it respectively lies, and the manner in which the same property is dealt with or affected by such instrument or instruments. —3 *Sugd. Vend. and Pur.* 346 *et seq.*

MEMORY OF MAN. In law the memory of man is supposed to extend back to the time of Richard the First; and until the 2 & 3 Will. 4, c. 71, any custom might have been destroyed by proving that it had not existed uninterruptedly from that period. But though it was essential to the validity of a custom that it should have existed before the commencement of the reign of Richard the First, yet proof of a regular usage for twenty years, not explained or contradicted, was that upon which many public and private rights were held, and sufficient for a jury in finding the existence of an immemorial custom.—2 *Chitty's Bl.* 31, *and note* 20. See tit. *Legal Memory.*

MENSA ET THORO. See tit. *Divorce.*

MERCHET (*merchetum*). The same as *marcheta.*—See tit. *Maiden Rents.*

MERCY. "To be in mercy" is the usual conclusion of a judgment in an action at common law. When the judgment is for the plaintiff, the form is that the defendant "be in mercy" (misericordia), that is, be *amerced* or fined for his delay of justice; when for the defendant, that the plaintiff be in mercy for his false claim. The practice of imposing any actual amercement has been long obsolete.—*Step. Pl.* 122.

MERE MOTION (*mero motu*). The free and voluntary act of a party himself without the suggestion or influence of another person. The phrase is used in letters patent, whereby the king grants, "of his especial grace, certain knowledge and *mere motion*" (ex speciali gratiâ, certâ scientiâ et mero motu), his license, power and authority, to the patentee to use and enjoy, exclusively, the new invention; and it manifests that the grant is not made upon the suggestion or suit of the party, but of the free and unfettered will of the monarch himself.—*Webster on Patents*, 76, *n.* (*d*). The expression is also applied to the occasional interference of the courts of law, who, under certain circumstances, will (*ex mero motu*) of their own motion, object to an irregularity in the proceedings of the parties to an action, though no objection be taken to the informality by the plaintiff or defendant in the suit.—3 *Chitty's Gen. Pr.* 430; 3 *Dowl.* 110; 1 *Bing. N. C.* 258; 1 *B. & P.* 366.

MERE RIGHT (*jus merum*). The right of property (the *jus proprietatis*), which a person may have in anything, without having either possession, or even the right of possession, is frequently spoken of in our books, under the name of the *mere right*; and the estate of the owner is in such cases said to be totally divested and *put to a right.*—*Co. Litt.* 345; 2 *Bl.* 197.

MERGER. The *merger* of an estate signifies the drowning or the absorbing of one estate in another; it may be illustrated as follows:—All inferior estates and interests in land are derived out of the fee-simple; therefore, whenever a particular estate, or limited interest in land, vests in the person who has the fee-simple of the same land, such particular estate or limited interest becomes immediately drowned or (as it is technically termed) *merged* in it. Thus, if I am tenant for years, and the reversion in fee-simple of the estate

which I hold for the term of years, descends to, or is purchased by me, the term of years is *merged* in the inheritance, and shall never exist any more.—1 *Cruise, 65*; 2 *Bl.* 177.

MERITORIOUS CAUSE OF ACTION. A person is sometimes said to be the *meritorious* cause of action, when the cause of action, or the consideration upon which the action is founded, originated with or was occasioned by such person. Thus, in an action by husband and wife, for the breach of an *express* promise to the wife in consideration of her *personal* labour and skill in curing a wound, she would be termed the *meritorious* cause of action. So in an action by husband and wife, upon an agreement entered into with her before marriage, she would be the *meritorious* cause of action; for it originated or accrued out of a contract entered into with *her.*—*Ch. on Con.* 181, *3rd ed.*

MERITS. The real or substantial grounds of the action are frequently so termed, in contradistinction to some technical or collateral matter which has been raised in the course of the suit. Thus, when a defendant demurs to the plaintiff's declaration on the ground of some informality, and the plaintiff, instead of amending, joins in demurrer with the view of having the point argued before the court; in such case, although he may be beaten upon the demurrer, by the court deciding against the sufficiency of the declaration in point of form, yet as the merits, or substantial grounds of the action, still remain to be tried, he may ultimately be successful upon these. So an *affidavit of merits* signifies an affidavit that upon the substantial facts of the cause justice is with the party so making such affidavit.

MERO MOTU, *Ex.* See tit. *Mere Motion.*

MERTON, STATUTE OF. The 20 Hen. 3 is so called because it was passed in a convent of St. Augustine, situate at Merton, in Surrey.

MESNALTY (*medietas*). The right of the *mesne* as the *mesnalty* is extinct. —*Old Nat. Brev.* 44.

MESNE (*medius*). Middle, intermediate, intervening. The word *mesne* is ordinarily used in the following combinations: — 1st. *Mesne Lord*; 2d. *Mesne Process*; 3d. *Mesne Assignments*; 4th. *Mesne Incumbrances*; 5th. *Mesne Profits.*

1st. A *Mesne Lord* was applied in the feodal times to the lord of a manor who had tenants under him, and yet a superior lord over him, and so held an intermediate position between the two.

2nd. *Mesne Process* is generally used in contradistinction to *final* process, and signifies any writ or process issued between the commencement of the action and the suing out *final* process or execution in such action; and includes also the writ of summons, notwithstanding this is the process by which personal actions are *commenced*, and therefore cannot be regarded now as *mesne* or intermediate process.—See *per Parke, B. in Harmer* v. *Johnson*, 14 *Mee. & W.* 340.

3rd. *Mesne Assignment* signifies an *intermediate* assignment. Thus, if A. grant a lease of land to B., and B. assign his interest to C., and C. in his turn assign his interest therein to D., in this case the assignments so made by B. and C. would be termed *mesne* assignments; that is, they would be assignments intervening between A.'s original grant, and the vesting of D.'s interest in the land under the last assignment.

4th. *Mesne Incumbrances* signify intermediate charges, burdens, liabilities or incumbrances; that is, incumbrances which have been created or have attached to property between

two given periods. Thus, when a vendor of an estate covenants to convey land to a purchaser free from all *mesne* incumbrances, it commonly means free from all charges, burdens or liabilities which might by possibility have attached to it between the period of his purchase and the time of the proposed conveyance to the intended vendee.

5th. *Mesne Profits* are intermediate profits; that is, profits which have been accruing between two given periods. Thus, after a party has recovered the land itself in an action of ejectment, he frequently brings another action for the purpose of recovering the profits which have been accruing or arising out of the land between the *periods of his title* to the possession, and his recovery in the action of ejectment, and such an action is thence termed an action for *mesne profits*.

MESNE ASSIGNMENT. See tit. *Mesne*.

MESNE INCUMBRANCES. See tit. *Mesne*.

MESNE PROCESS. See tit. *Mesne*.

MESNE PROFITS. See tit. *Mesne*.

MESNE, *Writ of*, (*de medio*). A writ in the nature of a writ of right, which lay when upon a subinfeudation, the *mesne* or middle lord suffered his under tenant, or tenant *paravail*, to be distrained upon by the lord *paramount* for the rent due to him by the mesne lord.—3 *Bl.* 234; 2 *Inst.* 374.

MESSAGES FROM THE CROWN. The mode of communicating between the sovereign and the houses of parliament. Such messages are brought either by a member of the house, being a minister of the crown, or by one of the royal household. In the lords, when there is such a message, the bearer of it having intimated that he has a message under the royal sign manual, the Lord Chancellor proceeds first to read it, and then the clerk at the table reads it over again. In the commons, the member appears at the bar and informs the speaker that he has a message from her majesty; he then takes it to the table and presents it, upon which the speaker reads it, the members meanwhile remaining uncovered. These forms having been gone through, the house proceeds to deal with the message accordingly.

MESSENGERS. The messenger of the Court of Chancery is an officer whose duty it is to attend on the great seal either in person or by deputy, and to be ready to execute all such orders as he shall receive from time to time from the Lord Chancellor, Lord Keeper, or Lords Commissioners.—*Chan. Com. Rep.* 138, *cited in Smith's Ch. Pr.* 57. There are certain persons also who are attached to the Court of Bankruptcy who are styled messengers, and whose duty consists, amongst other things, in seizing and taking possession of the bankrupt's estate during the working of the fiat.—See *Arch. Bank.* 24, *8th ed.*; 10 *Bing.* 540.

MESSUAGE (*messuagium*). In our law is not merely a house or habitation, but also a curtilage or the piece of adjacent land which usually accompanies a house, and which is considered as forming a portion of a messuage. Proof that a party was in separate possession of *two rooms* of a house, was held sufficient to satisfy an allegation that he was in possession of the *messuage*.—2 *Bing. N. C.* 618; *Spelman's Gloss. tit. Messuagium; Les Termes de la Ley.*

METEGAVEL (*cibi gablum seu vectigal*). A rent paid in victuals

instead of in money.—*Cowel; Taylor's Hist. of Gavelkind.*

METROPOLITAN. The Archbishop of Canterbury is styled "Primate of all England and *Metropolitan*," because the province of Canterbury contains within it the metropolis or chief city. The metropolitans were so called because they presided over the churches of the principal cities of the province. It was their duty to ordain the bishops of their province, to convoke provincial councils, and exercise a general superintendance over the doctrine and discipline of the bishops and clergy within the provinces. The province of York anciently claimed and had a *metropolitan* jurisdiction over all the bishops of Scotland, until about the year 1466, shortly after which time Pope Sextus the Fourth created the Bishop of St. Andrews Archbishop and *Metropolitan* of all Scotland.—1 *Burn's Ecc. Law, by Phillimore*, 194, 197, tit. *Bishops; Rog. Ecc. Law*, 105, 113; 1 *Williams' Exec.* 345.

METROPOLITICAL. See tit. *Metropolitan.*

MIDDLE MAN. An intermediate party; a person standing or acting between two others; as a stakeholder or auctioneer for instance.

MIDDLESEX, *Bill of.* See tit. *Bill of Middlesex.*

MILEAGE. A payment or charge of so much per mile is so termed. It is frequently used with reference to the charge made by sheriffs, when, for the purpose of executing writs, they have to travel any given number of miles.

MILITARY CAUSES. Are such as relate to contracts concerning deeds of arms and war, and are not determined, like other matters, by the common law of the land.—13 *R.* 2, *c.* 2.

MILITARY COURTS. See tit. *Court of Chivalry*, and also tit. *Court Martial.*

MILITARY FEUDS. See tit. *Knight Service.*

MINERAL COURTS. See tit. *Berghmoth.*

MINIMENTS. See tit. *Muniments.*

MINOR. A person who has not attained his majority is usually so termed; that is, an infant under the age of twenty-one years. See tit. *Infant.*

MINUTE TITHES. Are the *small* tithes. See tit. *Tithes.*

MISADVENTURE. As to what is considered killing by misadventure, see tit. *Homicide.*

MISCOGNIZANT. Not cognizant, ignorant, not knowing, &c.—*Cowel.*

MISCONTINUANCE. By some this word is said to signify the same as *discontinuance*; others say that it is making a *continuance* by improper process. See tit. *Continuance*, and also tit. *Discontinuance.*

MISDEMESNOR or MISDEMEANOR. A misdemesnor is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. This general definition, however, comprehends both *crimes* and *misdemesnors*; which, properly speaking, are mere synonymous terms, though in common usage the word "crimes" is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults and omissions of less consequence are comprised under the

milder term of *misdemesnors* only. In the English law the word misdemesnor is generally used in contradistinction to *felony*, and misdemesnors comprehend all indictable offences which do not amount to felony; as, perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, &c.—*4 Chitty's Bl. 5, and n. 3.*

MISE (Fr. *mise*, disbursements, expenses). This word is used in two senses; in one sense it signifies expenses, disbursements, &c. and in this sense it was ordinarily used in our common law proceedings; in the other sense it signifies *issue*, as applied to the proceedings on a writ of right; thus, instead of saying that the parties (in the proceedings on a writ of right) join issue, they are said to join the *mise.—Les Termes de la Ley.*

MISE-MONEY. Money given by way of contract or composition to purchase any liberty.—*Blount's Tenures*, 162; *Cowel.*

MISERICORDIA. This word was commonly used in our law to signify a discretionary mulct or amerciament, imposed upon a person for an offence; thus when the plaintiff or defendant in an action was amerced, the entry was always *ideo in misericordia*, and it was so called because the fine was but small (and therefore *merciful*) in proportion to the offence; and if a man was outrageously amerced in a court not of record, as in a court baron for instance, there was a writ called *Moderata Misericordia* to be directed to the lord or his bailiff, commanding them that they take moderate amerciaments in just proportion to the offence of the party to be amerced. When a fine is amerced on a whole county, instead of an individual, it is then termed *Misericordia Communis.—F. N. B. 75; Les Termes de la Ley.*

MISERICORDIA COMMUNIS. See tit. *Misericordia.*

MISFEASANCE. Doing evil, trespassing, &c.; and he who does so is sometimes called a *misfeasor.—Cowel.*

MISFEASOR. See tit. *Misfeasance.*

MISJOINDER. The joining of two or more persons together as the plaintiffs or defendants in an action who ought not to be joined. *Nonjoinder* is the *omitting* to join one or more persons as the plaintiffs or defendants in an action who ought to have been joined. See also tit. *Nonjoinder.*

MISKERING. See tit. *Abishering.*

MISNOMER. The mistake in a name, or the using one name for another.—*Broke, tit. Misnomer.*

MISPLEADING. Pleading incorrectly, or omitting anything in pleading which is essential to the support or defence of an action; as in the case of a plaintiff not merely stating his title in a defective manner, but setting forth a title which is essentially defective in itself; or if to an action of debt the defendant pleaded *not guilty*, instead of *nil debet*, this was mispleading.—*Salk. 365; Tomlins.*

MISPRISION (from the French *mespris*, neglect or contempt). Misprision is generally understood to be all such high offences as are under the degree of capital, but closely bordering thereon; and it is said that a misprision is contained in every treason and felony whatsoever. Misprisions are generally divided into two sorts, *negative* and *positive*; the former consisting in the conceal-

ment of something which ought to be revealed; the latter in the commission of something which ought not to be done. Of the first, or negative kind, is what is called *misprision of treason*, which consists in the bare knowledge and concealment of treason, without any degree of assent thereto. Of this negative kind is also *misprision of felony*, which is the concealment of a felony which a man knows but never assented to. The concealment of treasure-trove, which belongs to the king or his grantees by royal prerogative, is also a species of negative misprision. *Positive misprisions* are generally denominated *contempts* or *high misdemesnors*; such, for example, are the *mal-administration* of such high officers as are in public trust and employment; the *embezzling of the public money*; contempts against the king's prerogative, his person, and government, or his title, &c.—1 *Hawk. P. C.* 60; 4 *Bl.* 119 *et seq.*

MISPRISION OF CLERKS. The mistakes or omissions made by clerks in their writings or records.—2 *Arch. Pract.* 1143.

MIS-TRIAL. A false or erroneous trial, as where it is in a wrong county, &c.—8 *Cro.* 284; *Cowel.*

MISUSER. The misusing or abusing any office or liberty, either public or private; the same as *non-user* means the neglect in attending to the duties. Thus when a judge takes a bribe, or a park-keeper kills deer without authority, this is a *misuser* or abuse of their respective offices. So when a functionary omits to perform the duties of his office, this is *non-user* or *neglect*.—2 *Bl.* 152; *Co. Litt.* 233.

MITTENDO MANUSCRIPTUM PEDIS FINIS. An old obsolete writ which used to be directed to the treasurer and chamberlains of the Exchequer, to search for and *transmit the foot of a fine*, acknowledged before justices in Eyre, into the Common Pleas.—*Reg. Orig.* 14; *Cowel.*

MITTER LE DROIT (*to pass, or transfer the right*). This phrase is used in contradistinction to that of *mitter l'estate*, and both are employed to point out the mode in which releases of land operate. A release is a conveyance *of a right* to a person *in possession*. Thus where a person was disseised or put out of possession of lands, although the disseisor thereby acquired the possession, still the *right of possession* and property remained in the disseisee, but if the disseisee agreed to transfer his rights to the disseisor, the proper mode of carrying such an agreement into execution was by a release, the disseisor *already* having the *possession*; and as in such cases nothing but the bare *right* passed, the release was said to enure by way of *mitter le droit*, i. e. transferring the right. A release was said to enure by way of *mitter l'estate*, i. e. of passing the estate, when two or more persons became seised of the same estate by a a joint title, either by contract or descent, as joint tenants or coparceners, and one of them releases his right to the other, such release is said to enure by way of *mitter l'estate*, i. e. transferring the estate.—4 *Cru. Dig.* 84, 85.

MITTER L'ESTATE. See tit. *Mitter le Droit.*

MITTIMUS. A writ by which records are transferred from one court to another, sometimes immediately, as appears by the stat. R. 2, c. 15, as out of the King's Bench into the Exchequer; and sometimes by a certiorari into Chancery, and from thence by a mittimus into another court. This word is also used to signify a

precept that is directed by a justice of the peace to a gaoler for the receiving and safe keeping of a felon or other offender committed by the said justice to the gaol.—*Les Termes de la Ley.*

MITTRE A LARGE. To set at liberty.—*Law Fr. Dict.*

MIXED ACTIONS. Are such as partake of the twofold nature of real and personal actions, having for their object the demand and restitution of *real* property, and also *personal* damages for a wrong sustained.—3 *Bl.* 118.

MIXED or COMPOUND LARCENY. See tit. *Larceny.*

MIXED TITHES. See tit. *Tithes.*

MODERATA MISERICORDIA. See tit. *Misericordia.*

MODO ET FORMA. See tit. *Manner and Form.*

MODUS. See tit. *Modus Decimandi.*

MODUS DECIMANDI (*the manner of tithing, or paying tithes*). A discharge from the payment of tithes, by custom or prescription, is said to be either *de modo decimandi*, (i. e. in the manner of tithing or paying tithes), or *de non decimando*, (i. e. in paying no tithes). A *modus decimandi*, commonly called by the simple name of *modus* only, is where there is by custom a particular *manner of tithing* allowed, different from the general manner of taking tithes in kind; and this is sometimes effected by a pecuniary compensation, as twopence an acre for the tithe of land; sometimes it is a compensation in work and labour, as that the parson shall have only the twelfth cock of hay, and not the tenth, in consideration of the owners making it for him, and the like; in short, any means whereby the general law of tithing is altered, and a new method of taking them is introduced, is called a *modus decimandi*, or special *manner of tithing*. A discharge from the payment of tithes by a custom or prescription, *de non decimando*, arises either from some personal privileges which the party enjoys who is so discharged, or by real composition made in lieu of payment of tithes, or from some other like circumstance. Thus the king, by his prerogative, is discharged from all tithes; so a vicar is discharged from paying tithes to the rector, and the rector to the vicar. A real composition is made by an agreement between the owner of lands and the parson or vicar, with the consent of the ordinary and the patron, that such lands shall for the future be discharged from payment of tithes, in consideration of some land or other real recompense being given to the parson in lieu and satisfaction thereof.—2 *Bl.* 29; 2 *Inst.* 490; 14 *Mes. & W.* 393.

MOIETY (from the Fr. *moitié*, half). The half or part of anything. Thus joint tenants are sometimes said to hold by moieties.—*Cowel.*

MOLLITER MANUS IMPOSUIT (*he laid hands on him gently*). When a person is sued for an assault, he may set forth the whole case, and plead that he laid hands on him gently, *molliter manus imposuit.* From these words having been so used in pleas, several justifications in actions of trespass for assault are called by this phrase.—1 *Sid.* 301; 3 *Bl.* 121.

MONEY BILLS. In the language of parliament signify bills for granting aids and supplies to the crown. It is the privilege of the Commons to originate all bills of this description.

MONEY SCRIVENER. See tit. *Scrivener.*

MONISH, *To.* See tit. *Monition.*

MONITION. An order, or admonitory epistle, issuing from a spiritual court, and addressed to some person or persons offending against the laws ecclesiastical, advising or monishing them to act in obedience to those laws. When a party has been duly served with a monition, he is technically said to have been "*monished.*" See *Rog. Ecc. Law; Burn's Ecc. Law,* tit. *Monition.*

MONSTER. One who has not the shape of a human being, and although born in lawful wedlock cannot be heir to any land.—2 *Bl.* 246.

MONSTRANS DE DROIT (*shewing of right*). One of the common law methods of obtaining possession or restitution from the crown, of either real or personal property, is by *monstrans de droit,* manifestation or plea of right, which may be preferred or prosecuted either in the Chancery or Exchequer. The party shall have this *monstrans de droit,* when the right of the party, as well as the right of the crown, appears upon record, which is putting in a claim of right, grounded on facts already acknowledged and established, and praying the judgment of the court whether, upon those facts, the king or the subject has the right. —3 *Bl.* 255; *Skin.* 609.

MONSTRANS DE FAITS OU RECORDS (*showing of deeds or records*). Showing of deeds or records means this. Supposing an action of debt to be brought against A. upon an obligation by B., or by executors, &c.; after the plaintiff has declared, he ought to show his obligation, and the executor the testament, to the court. And so it is of records. And the difference between *monstrans de faits* and *oyer de faits* (i. e. hearing of deeds) is this; he that pleads a deed or record, or declares upon it, ought to *show* the same; and the other *against whom* such deed or record is pleaded or declared, and is thereby to be charged, may demand *hearing* (*oyer*) of the same deed or record, which his adversary brings or pleads against him.—*Les Termes de la Ley.*

MONSTRAVERUNT. A writ which lay for the tenants in ancient demesne, and was directed to the lord, commanding him not to distrain his tenant to do services which he was not bound to do, or to pay any toll or imposition which was contrary to his liberty. — *Cowel; F. N. B.* 14; *Les Termes de la Ley.*

MONTH. In law is a lunar month, or twenty-eight days, unless otherwise expressed. Hence a lease for twelve months is for forty-eight weeks only; but if it be for "a twelvemonth" it is good for the whole year. In a contract, if the parties obviously intended that a month should be a *calendar* month, the law will give effect to that intention. If money be lent for nine months it must be understood *calendar* months.—*Str.* 446. In legal proceedings, as in time to plead, a month is four weeks.—3 *Burr.* 1455. But where a statute speaks of a *year,* it shall be computed by the whole *twelve months.*— 2 *Cro.* 167. See also 1 *M. & Sel.* 111; *Imp. Mod. Pl.* 139; 6 *Term Rep.* 224.

MOOT (from the Sax. *motian,* to plead, to treat, or handle, &c.) A term introduced by law students into our inns of court, signifying to argue, plead, or propound a case, by way of mental exercise, and to prepare them for the support and defence of their clients' causes, when they came into actual practice; and the place where these cases were argued was anciently

called a *moot-hall*; and those who argued the cases *moot-men*.—*Cowel.*

MOOT-MEN. See tit. *Moot.*

MORATUR or DEMORATUR IN LEGE (*he demurs*). See tit. *Demurrer at Law.*

MORT D'ANCESTOR. An assize of *mort d'ancestor* is a writ which lies for a person whose ancestor died seised of lands, &c. that he had in fee-simple, and after his death a stranger abated: and this writ directs the sheriff to summon a jury or assize, who shall view the land in question and recognize whether such ancestor were seised thereof on the day of his death, and whether the demandant be the next heir.—*F. N. B.* 195.

MORTGAGE (*mortgagium*, from *mort*, death, and *gage*, pledge). A mortgage may be described to be a conveyance of lands by a debtor to his creditor, as a pledge or security for the repayment of a sum of money borrowed. The debtor who so makes a conveyance of his lands, or so puts them in pledge, is termed the *mortgagor*, and the creditor to whom the lands are so conveyed as a security for the money lent, is termed the *mortgagee*. The mortgagee with respect to the *tenure* which he acquires in the lands so conveyed to him, is also termed a *tenant in mortgage*. Mortgages are of two sorts: either the lands are conveyed to the mortgagee and his heirs in fee-simple, with a proviso that if the mortgagor pays the money borrowed on a certain day, the mortgagee will reconvey the lands; or else the lands are conveyed to the mortgagee, his executors, administrators and assigns for a long term of years, with a proviso that if the money borrowed is repaid on a certain day, the term shall cease and become void. There is also another kind of mortgage, where the proviso for redemption does not oblige the mortgagor to pay the money on a particular day, but allows him to do it at any indefinite time; and this is called a Welsh mortgage.—2 *Cruise*, 81; 2 *Bl.* 152.

MORTGAGOR. See tit. *Mortgage.*

MORTGAGEE. See tit. *Mortgage.*

MORTMAIN (from the Fr. *mort* death, and *main* hand). All purchases made by corporate bodies are said to be purchases in *mortmain*, in *mortua manu*, so called because these purchases being usually made by ecclesiastical bodies, the members of which (being professed) were reckoned *dead* persons in law. Many of the statutes relating to the purchasing of lands by corporations are also called the statutes of mortmain. —1 *Inst.* 2; 1 *Bl.* 479.

MORTUARY (*mortuarium*). A *mortuary* is that beast or other moveable chattel, which upon the death of the owner thereof, by the custom of some places, becomes due to the parson, vicar, or rector of the parish in which the person so dying resided, in lieu or satisfaction of tithes or other ecclesiastical offerings which such party may have forgotten, or have neglected to pay while alive.—21 *H.* 8, *c.* 6; *Les Termes de la Ley.*

MORTUO VADIO, *Estate in.* See tit. *Mortgage.*

MOTEER. A customary service or payment made at the *mote* or court of the lord.—*Cowel.*

MOTION. An application to the court by the plaintiff or defendant in an action, or by their counsel, in order to obtain some rule or order of court, which may become necessary in the course of the proceedings; and the *act* of making such an applica-

tion is termed *moving the court*. The word also signifies *instance, desire, will*, &c. Thus a person is said to do a thing of his own *motion*; i. e. voluntarily, without being required to do it.

MOTION OF COURSE. Is a motion which is granted as a matter of course, and which therefore is not made in open court, but is granted by the master or officer of the court when the paper containing the direction to move is laid before him, with a barrister's signature attached.

MOTIONS IN PARLIAMENT. Making a motion in either house of parliament is simply the act of submitting a proposition. In the House of Commons a member desirous of making a motion is required to give previous notice thereof, and having done so, it is entered in terms upon the notice paper or order book. In the Lords this notice is not required by the rules of the house, but, for the sake of the general convenience, the same practice ordinarily prevails. In the House of Commons there are certain fixed days appointed for motions of which notice has previously been given, as contradistinguished from "orders of the day," which latter are questions which the house has already agreed to consider, or has partly considered and adjourned for further consideration or debate. On an "order" day the orders have precedence of motions, and on a "motion" day the latter have precedence of orders; but in either case if the one can be disposed of in time, the house will proceed to the other.

MOVEABLE TERMS. Previous to the passing of the 11 Geo. 4 & 1 Wm. 4, c. 70, Hilary and Michaelmas Terms were called *fixed* terms, because they invariably began on certain fixed days in the year; whilst Easter and Trinity Terms were called *moveable* terms, because their commencement was regulated by moveable feasts, viz. Easter Day and Trinity Sunday. This distinction, however, now no longer exists, as the commencement and duration of all the terms are fixed by the statutes 11 *Geo.* 4 & 1 *W.* 4, *c.* 70, *s.* 6, and 1 *W.* 4, *c.* 3, *s.* 3.—1 *Arch. Pr.* 90, *7th ed.*

MULCT (*mulcta*). A fine or penalty.

MULIER. See tit. *Eigne.*

MULIER PUISNE. See tit. *Eigne.*

MULIERTY. The state or condition of a *mulier* or lawful issue.—*Cowel.* See also tit. *Eigne.*

MULTÆ or MULTURÆ EPISCOPI (from the Lat. *Mulcta*, a fine). A fine payable by a bishop to the king, in order that he might have power to make his last will and testament, and to have the probate of other men's wills, and the granting of administrations.—2 *Inst.* 491; *Cowel.*

MUNIMENTS (*munimenta*). Deeds, evidences, and writings in general, whether belonging to public bodies or private individuals, are called muniments; and in cathedral and collegiate churches there is a strong room or compartment provided for the keeping of the muniments relating to their property, &c. which is thence termed a *muniment house.*—*Les Termes de la Ley*; 3 *Inst.* 170.

MURAGE (*muragium*). A toll or tribute formerly levied for the repairing or building of public walls.—*F. N. B.* 227.

MURDER (*murdrum*). The act of a person of sound memory, and of discretion, unlawfully killing any

person under the king's peace, with malice aforethought, either express or implied. *Express* malice is signified by one person killing another with a deliberate mind and formed design; and which formed design is evidenced by external circumstances discovering that inward intention; as by lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. *Implied* malice is signified by one person's voluntarily killing another without any provocation: for when such deliberate acts are committed, the law *implies* or presumes malice to have urged the party to the commission of them, although no particular enmity can be proved.—3 *Inst.* 47; 1 *Hale*, 455.

MUTE (*mutus*). A prisoner is said to stand *mute* when, being arraigned for treason or felony, he either makes no answer at all, or answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise; or upon having pleaded not guilty, refuses to put himself upon the country.—4 *Bl.* 324.

MUTINY ACT. An act of parliament to punish mutiny and desertion, and for the better payment of the army and their quarters.—1 *Bl.* 415.

MUTUAL PROMISES. In a declaration in special assumpsit the plaintiff usually alleges that, in consideration that he, at the request of the defendant, had then *promised the defendant* to observe, perform, and fulfil all things in the agreement on his, the plaintiff's, part, the defendant *promised the plaintiff* that he would perform and fulfil all things in the said agreement on his, *the defendant's, part* to be observed and performed, which is thence termed the allegation or statement of *mutual promises*.

MUTUO. To borrow or to lend.—2 *Saund.* 291.

MYSTERY (*misterium*). The art, trade, business, or occupation of a person.—*Cowel.*

N.

NAM or NAAM (*namium*, from the Sax. *namin*, to take). The attaching, taking, or distraining another man's moveable goods.—*Les Termes de la Ley; Horn's Mirr.*

NAMATION. See tit. *Nam.*

NAMIUM VETITUM. The unjust taking of another person's cattle, and driving them to an unlawful place, under pretence of damage having been done by them, in which case the owner may demand satisfaction for the injury, which is called *placitum de namio vetito.*—*Cowel.*

NATIVO HABENDO. A writ which lay for a lord when his villein had run away from him; it was directed to the sheriff, and commanded him to apprehend the villein, and to restore him together with his goods to the lord. But if a villein had tarried in ancient demesne for the period of a year and a day without having been claimed by his lord, then the lord could not seize him in the said franchise.—*Les Termes de la Ley.*

NATURAL BORN SUBJECTS. Those who are born within the dominions, or rather within the allegiance of the King of England.—1 *Bl.* 366, 371.

NATURAL LIFE. See tit. *Death.*

NATURALIZATION. The making a foreigner a lawful subject of the state, or, as it is sometimes termed, the king's natural subject. 1 *Bl.* 371.

NE ADMITTAS. A prohibitory writ which issues during the pending of proceedings upon a *quare impedit*, forbidding the bishop to *admit* any clerk whatever until such proceedings are ended, and the point in dispute is determined.—*F. N. B.* 32, 37.

NEATHER VERT. See tit. *Vert.*

NE DISTURBA PAS, *Plea of.* (Fr. *do not hinder*). A plea which a defendant sometimes pleads, in the motion of *quare impedit*, and by which he denies that he hinders the patron from presenting to the church, as alleged by the plaintiff in his declaration. The following is a form of such a plea:—"And the said bishop C. D., and the said E. F., by ——, their attorney, say that they *do not hinder* the said A. B. to present a fit person to the said church, in manner and form as the said A. B. hath in his said declaration above alleged; and of this the said bishop C. D. and the said E. F. put themselves upon the country."—*Winch's Entries; Rog. Eccl. Law*, 22; *Step. on Pl.* 168, 4*th ed.*

NE EXEAT REGNO (that he leave not the kingdom). A writ which issues to restrain a person from leaving the kingdom. This writ is frequently resorted to in equity, when one party has an equitable demand against another, and that other is about to leave the kingdom; and it is only in cases where the intention of the party to leave can be shown, that this is granted.—*F. N. B.* 85; *Gray's Ch. Pr.* 76.

NEGATIVE PREGNANT. In pleading, signifies the statement of a negative proposition in such a form as may imply or carry with it the admission of an affirmative. Thus, in an action of trespass for entering the plaintiff's house, the defendant pleaded, that the plaintiff's daughter gave him license to do so, and that he entered by that license; to which the plaintiff replied, that *he did not enter by her license.* This replication was held to be a *negative pregnant*, inasmuch as it might imply or carry with it the admission that a *license was given*, although the defendant *did not enter by that license;* and the proposition would therefore, in the language of pleading, be said to be *pregnant* with that admission, viz. that a license was given. A negative pregnant is one of those faults in pleading, which falls within the rule that pleadings must not be ambiguous or doubtful in meaning. In the above instance the plaintiff should have denied either the entry by itself, or the license by itself; for the effect of denying both together, was to leave it doubtful whether he meant to deny *the license*, or the fact of the defendant's entry by virtue of that license.—*Step. on Pl.* 408, 409, 4*th ed.*

NEGATIVE STATUTE. See tit. *Affirmative Statute.*

NEIF or NIEF (from the Fr. *naif*, i. e. native, natural). A bond-woman or female villein.—*Les Termes de la Ley.* And the writ by which the lord claimed such a woman for his *neif*, was termed a *writ of neifty.*—*Cowel.*

NE INJUSTE VEXES. See tit. *Monstraverunt.*

NEMINE CONTRADICENTE. The words by which the unanimous consent of the members of the houses of parliament to a vote or resolution is signified.—*Tomlins.*

NE RECIPIATUR (that it be not received). A caveat which a defendant may enter to stop certain proceedings of the plaintiff, as to hinder the plaintiff from trying his cause at a certain sittings in term, &c.—1 *Arch. Pr.* 355.

NEW ASSIGNMENT. From the very general terms in which declarations are framed, the defendant is sometimes not sufficiently guided to the real cause of complaint, and is in consequence led to apply his plea to a different matter from that which the plaintiff had in view. In such cases a plaintiff is obliged to resort, in his replication, to a mode of pleading termed a *new assignment*, for the purpose of setting the defendant right. A new assignment, as the phrase imports, is an instrument in which the plaintiff *assigns afresh* his ground of complaint with more certainty and particularity than he had previously done in the declaration, and distinguishes the true ground of complaint from that which the defendant in his plea had assumed it to be. Thus, in an action of trespass *quare clausum fregit* for repeated trespasses, the declaration usually states that the defendant on divers days and times before the commencement of the suit, broke and entered the plaintiff's close, and trod down the soil, &c., without setting forth more specifically in what parts of the close, or on what occasions, the defendant trespassed: now it might happen that the defendant claimed a right of way over a certain part of the close, and in exercise of that right had repeatedly entered and walked over it; and it may also happen that he has entered and trod down the soil, &c. on other occasions, and in parts out of the supposed line of way, and the plaintiff not admitting the right claimed may have intended to apply his action both to the one set of trespasses and the other. But as from the generality of the declaration it would be consistent to suppose that it referred only to his entering and walking in that part over which he claimed the right of way, the defendant would be entitled to suppose or assume that it referred in fact only to his entering and walking in that line of way. He might, therefore, in his plea allege as a complete answer to the whole complaint, that he had a right of way by grant, &c. over the said close; and if he did this, and the plaintiff confined himself in his replication to a denial of that plea, and the defendant at the trial proved a right of way as alleged, the plaintiff would be precluded from giving evidence of any trespasses committed out of the line or track over which the defendant thus appeared entitled to pass. In such case, therefore, the plaintiff's course would be, in his replication, both to deny the plea, and also to new assign, by alleging that he brought his action not only for those trespasses, supposed or assumed by the defendant, but also for others committed on other occasions, and in other parts of the close out of the supposed track or line of way over which the defendant so claimed a right to pass; and such a new assignment is usually called a new assignment *extra viam*. —*Steph. Pl.* 247, 252.

NEW TRIAL PAPER. A paper containing a list of causes in which rules nisi have been obtained for a new trial, or for entering a verdict in place of a nonsuit, or for judgment *non obstante veredicto*, or for otherwise varying or setting aside proceedings which have taken place at Nisi Prius. These are called on for argument in the order in which they stand in the paper, on days appointed by the judges for the purpose.

NEW TRIAL MOTION PAPER. By the practice of the courts, motions

for new trials must in general be made within the first four days of term; but when from pressure of business or other like cause, the courts have not had time to dispose of all the applications, it is the practice to have the names of the causes and of the counsel who are instructed to move therein, put into a list, called the *new trial motion paper;* and the motions are then heard and disposed of on the following or some subsequent day, according to the seniority of counsel appointed to move therein. —*Arch. Pract.* 135, 8*th edit.*

NEXT FRIEND. See tit. *Prochein Amy.*

NIENT COMPRISE (French *nient*, not or nothing, and *comprendre*, to comprise, to contain, &c.) An exception taken to a petition as unjust, because the thing desired is not contained in that act or deed on which the petition is grounded. As if one petitions the court to be put into possession of a house which was formerly among other lands which have been adjudged to him; and the adverse party pleads that this petition should not be granted, because although he had a judgment for certain lands and houses, yet the house which he petitions to be put into possession of, is not contained among those for which he had judgment.—*Cowel.*

NIENT CULPABLE (*not guilty*). The plea of not guilty is so rendered in old French; and it formerly used to be abbreviated upon the minutes thus, "*non* (or *nient*) cul." — 4 *Bl.* 389.

NIENT DEDIRE. To suffer judgment to be had against one by *nient dedire*, signified to suffer it by not denying or opposing it, i. e. by default.—*Cowel.*

NIGHT. As to what is reckoned night and what day, with reference to the offence of burglary, it seems to be the general opinion that if there be daylight or *crepusculum* enough begun or left to discern a man's face, this is considered day. And night is defined, or rather described, by some, to be when it is so dark that the countenance of a man cannot be discerned.—1 *Hale's P. C.* 350; 4 *Bl.* 224.

NIHILS or NICHILS. Such issues as the sheriff apposed says are worth *nothing*, and not leviable because of the insufficiency of the party who should pay them.—*Les Termes de la Ley; Cowel.*

NIHIL CAPIAT PER BREVE or PER BILLAM (*that he take nothing by his writ*). The judgment given against a plaintiff either in bar of his action, or in abatement of his writ.—*Co. Litt.* 363.

NIHIL or NIL DEBET (*he owes nothing*). The plea to an action of debt on simple contract is commonly *not indebted* or *nil debet.*—3 *Bl.* 345.

NIHIL or NIL DICIT (*he says nothing*). When the plaintiff in an action has stated his case in the declaration, it is incumbent on the defendant, within a prescribed time, to make his defence and to put in a *plea*, otherwise the plaintiff will be entitled to have judgment by *default* or *nil dicit* of the defendant.—*Arch. Pract.* 733; 3 *Bl.* 296.

NIHIL or NIL HABUIT IN TENEMENTIS. A plea to be pleaded in an action of debt only, brought by a lessor against a lessee for years, or at will, without deed.—2 *Lil. Abr.* 214; *Tomlins.*

NISI PRIUS (*unless before*). The *nisi prius* courts are such as are held

for the trial of issues of fact before a jury and one presiding judge. It is in these courts that the various disputes and differences which daily arise between man and man, and which form the subject-matter of civil actions, are heard and determined. The circumstance of the *nisi prius* courts taking cognizance of questions of *fact* only arising between man and man in his *civil* capacity, occasions them to be frequently mentioned in contradistinction to the criminal courts, and to the courts sitting in *banc* or *banco* for the hearing and determining questions of law. Thus, a judge may be said to be sitting in *banc*, or at *nisi prius*; in the one case he would, in company with three other learned judges, be hearing and determining questions of *law*, which have been raised for the opinion of the court; in the other, he would be presiding at the trial of some question of *fact* which was to be submitted to the consideration of a jury. So at the assizes, a judge is said to be sitting in the *nisi prius* court, as distinguished from the *crown court*, wherein the trial of prisoners takes place. The same distinction prevails when speaking of the peculiar qualifications of an advocate; thus an advocate is frequently said to be a good *nisi prius* lawyer, meaning thereby, that he possesses in an eminent degree that peculiar learning, and those mental qualifications, more particularly required to attain success in the conduct and management of trials at nisi prius. For the *origin* of the words *nisi prius*, and for an explanation of the several other senses in which they are used, see the outline of an action at law, at the end of this Dictionary.

NISI PRIUS RECORD. See tit. *Record.*

NISI RULE. See tits. *Rule* and *Absolute Rule.*

NOCTANTUR (*in the night-time*). A writ so called, which formerly issued out of chancery, and was returnable in the King's Bench. Repealed by the 7 & 8 Geo. 4, c. 27.—*Cunningham.*

NOLLE PROSEQUI (*that he will not prosecute or follow up*). A *nolle prosequi* is in the nature of an acknowledgment or undertaking by the plaintiff in an action to forbear to proceed any further either in the action altogether, or as to some part of it, or as to some of the defendants. A *nolle prosequi* is different from a *non pros.*, for there the plaintiff is put out of court with respect to all the defendants. If a plaintiff misconceives his action, or makes a mistake as to the party sued (as where he sues a *feme covert*, and she pleads *coverture* in bar, or the like) he may enter a *nolle prosequi* as to the whole cause of action, and proceed *de novo* in another action.—2 *Arch. Pract.* 1114.

NOMINATING A JURY. See tit. *Striking a Jury.*

NOMINATION TO A LIVING. The rights of *nominating* and of *presenting* to a living, are distinct, and may reside in different persons. Presentation is the offering a clerk to the bishop. *Nomination* is the offering a clerk to the person who has the right of presentation. Thus, one seised of an advowson may grant to A. and his heirs that whenever the church becomes vacant, he will present such a person as A. or his heirs shall nominate. He who has the right of nomination is to most purposes considered as the patron of the church.—*Plowd.* 529; *Rog. Eccl. Law*, 5.

NOMINE POENÆ (*in the name of a penalty*). A penalty agreed to be paid by a person on the non-performance of some specified act; and is

in the nature of a security for the due performance of such act. Thus a further security for the payment of rent is sometimes agreed upon, by the insertion of a covenant upon the part of the lessee, that he will forfeit a certain sum upon non-payment of such rent; and in this case the sum so agreed to be forfeited would be termed a *nomine pœnæ*.—*Woodf. Land. and Ten.* 283, *4th ed.*; 1 *Wms. Exors.* 651, *3rd ed.*; 1 *Burr.* 582; *Hob.* 82, 133; *Bull. N. P.* 56.

NON-ABILITY. The circumstance of a man's being an outlaw, an alien born, or condemned in *præmunire*, constitutes *non-ability* as a plaintiff in an action, and disables him to sue.—*Litt. lib.* 2, *c.* 11.

NON-AGE. Under twenty-one years of age in some cases, and under fourteen or twelve in others.—See tit. *Age*.

NON ASSUMPSIT (*he hath not promised*). The name of a plea which occurs in the action of *assumpsit*, by which the defendant denies that he *undertook* or *promised* to do the thing which the plaintiff in his declaration alleges that he did undertake and promise to do; and this plea operates as a denial in point of fact of the existence of any express promise of the fact alleged in the declaration, or of the matters of fact from which the promise alleged would be implied by law.—*Steph. on Plead.* 170, 180.

NON ASSUMPSIT INFRA SEX ANNOS (*he has not promised within six years*). There are certain periods limited by law within which actions *must* be brought; in an action of *assumpsit* the period is six years; if, therefore, any person commences such an action for any thing which did not accrue or happen within such period of six years, the defendant may plead *non assumpsit infra sex annos*, i. e. he made no such promise within six years; which plea is an effectual bar to the complaint; and the defendant in such case is said to plead the statute of limitations.—8 *Bl.* 308.

NON-BAILABLE ACTION. An action in which the defendant is not arrested, and therefore not required to find *bail*.

NON CEPIT (*he has not taken*). A plea which occurs in the action of *replevin*, in which action the plaintiff alleges in his declaration that the defendant "took certain cattle or goods of the plaintiff in a certain place called, &c." and this plea states that he *did not take* the said cattle or goods "in manner and form as alleged," which involves a denial both of the taking and of the *place* in which the taking was alleged to have been; the *place* being a material point in this action.—*Steph. on Plead.* 185.

NON-CLAIM. The omission or neglect of him who ought to *claim* his right within the time limited by law; as within a year and a day where a continual claim was required, or within five years after a fine had been levied.—*Les Termes de la Ley.*

NON COMPOS MENTIS. Of unsound mind.

NON CONSTAT (*it does not appear*). It is by no means clear or evident, &c. See it used in *King* v. *Sainsbury*, 4 *Term R.* 455, *per Garrow, in arg.*

NON-CUL. An abbreviation of *non-culpabilis*, not guilty. This plea of not guilty used formerly to be so written upon the minutes.—4 *Bl.* 339. See also tit. *Nient Culpable*.

NON DAMNIFICATUS (*not damnified or hurt*). This is a plea in an action of debt on an indemnity bond,

or bond conditioned "to keep the plaintiff harmless and indemnified," &c.; it is in the nature of a plea of performance, being used where the defendant means to allege that the plaintiff *has* been kept harmless and indemnified according to the tenor of the condition.—*Steph. on Plead.* 388.

NON DECIMANDO (*not paying tithes*). A custom or prescription *de non decimando* is a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them.—2 *Bl.* 31. See also tit. *Modus decimandi*, and tit. *De non decimando.*

NON DETINET (*he does not detain*). A plea which occurs in the action of *detinet*, by which the defendant alleges that he *did not detain* "the said goods" in the plaintiff's declaration specified, &c. It operates therefore as a denial of the detention of the goods in question by the defendant.—*Steph. on Plead.* 175.

NON DISTRINGENDO. A writ which was formerly used in various causes to forbid the levying of a distress.—*Cowel; Reg. Orig.*

NON EST CULPABILIS. A general plea by which the defendant denies the fact with which he is charged by the plaintiff.—*Les Termes de la Ley.* See also tit. *Non-cul.*

NON EST FACTUM (*it is not his deed*). A plea which occurs in the action of debt on bond or other specialty, and also in covenant. In this plea the defendant denies that the deed mentioned in the declaration is *his* deed.—3 *Bl.* 305; *Steph. on Plead.* 169, 172.

NON EST INVENTUS (*he is not found*). When a writ is directed to the sheriff, commanding him to arrest the defendant, and he is unable to do so because he cannot find him, he *returns* the writ with an indorsement on it to that effect; and this is technically called a *return of non est inventus.*—*Arch. Prac.* 208.

NON FEASANCE (*non performance*). The omitting to do what ought to be done; the same as *malefeasance* is the doing of what ought not to be done. See tit. *Malefeasance.*

NON IMPLACITANTO ALIQUEM DE LIBERO TENEMENTO SINE BREVI. A writ to prohibit bailiffs, &c. from levying a distress upon any man without the king's writ touching his freehold.—*Cowel.*

NON INTROMITTANT CLAUSE. A clause in an act of parliament is so called, which excludes a person or any body of persons from exercising authority or jurisdiction within any given district. Thus, in the case of *The King* v. *Sainsbury and another*, it was held, that although by charter the mayor and some of the aldermen of London had jurisdiction in Southwark, yet that as the charter contained no *non intromittant* clause as to the justices of the county of Surrey, the latter had a concurrent jurisdiction with the former.—4 *T. R.* 451.

NON INTROMITTENDO QUANDO BREVE DE PRÆCIPE IN CAPITE SUB DOLE IMPETRATUR. A writ which used to be formerly directed to the justices of the bench or in *eyre*, commanding them not to give one who had (under cover of entitling the king to land, &c. as holding of him *in capite*) deceitfully obtained the writ called *præcipe in capite*, the benefit of the same, but to put him to his writ of right if he thought fit to use it.—*Cowel.*

NON-JOINDER. The *not joining* of any person or persons as a co-

defendant or co-plaintiff. It may be further illustrated by the following passage from Tidd's Practice: "In actions upon *contracts*, when there are several parties, the action should be brought by or against all of them, if living, or if some are dead, by or against the survivors; and if an action be brought by one of several parties on a joint contract made with all of them, the *non-joinder* may be pleaded in bar," i. e. *the fact of all the parties to the contract not having joined in the action* may be pleaded in bar.—*Tidd's New Pract.* 318.

NON MERCHANDIZANDO VICTUALIA. A writ which formerly used to be directed to the justices of assize, commanding them to inquire whether the officers of certain towns sold victuals in gross or by retail during the exercise of their office, contrary to a statute then in force, and to punish them accordingly.—*Cowel; Reg. Orig.* 184.

NON MOLESTANDO. A writ which lay for him who was *molested* contrary to the king's protection granted him. —*Cowel.*

NON OBSTANTE VEREDICTO (*notwithstanding the verdict*). When the defence of the defendant in an action put upon the record is not a legal defence to the action in point of substance, and the defendant obtains a verdict, the court, upon motion, will give the plaintiff leave to sign judgment *notwithstanding the verdict*, provided the merits of the case be very clear; and this is called judgment *non obstante veredicto.*—2 *Arch. Pract.* 1139.

NON OMITTAS (*that you omit not*). The clause in writs of capias and writs of execution, commanding the sheriff to "*omit not* by reason of any liberty in his bailiwick, to perform the act pointed out to him in the writ, is, from the words used therein, called the *non omittas clause.*—1 *Arch. Pract.* 154.

NON OMITTAS PROPTER ALIQUAM LIBERTATEM. A writ directed to the sheriff, commanding him *not to omit* to execute the king's process *on account of any liberty* or franchise which he would be obliged to enter in order to effect that object. This writ is seldom used now, because sheriffs are usually enabled, in the first instance, to enter into any franchise or liberty by virtue of the *non omittas* clause, which is now inserted in writs.—1 *Arch. Pract.* 154; *Cowel.* See also tit. *Non omittas.*

NON PONENDIS IN ASSISIS ET JURATIS. A writ which lay for persons who are summoned to attend the assizes or to sit on a jury, and wish to be freed and discharged from the same.—*F. N. B.* 165; *Reg. Orig.* 100.

NON PROCEDENDO AD ASSISAM REGE IN CONSULTO. A writ to put a stop to the trial of a cause appertaining unto one who is in the king's service, &c. until the king's pleasure respecting the same be further known. —*Cowel.*

NON PROS or NON PROSEQUITUR (*he does not prosecute or follow up*). If in the proceedings of an action at law the plaintiff neglects to take any of those steps which he ought to take within the time prescribed by the practice of the courts for that purpose, the defendant may enter judgment of *non pros* against him, whereby it is adjudged that he does not follow up (*non prosequitur*) his suit as he ought to do, and therefore ought to have judgment against him. *Smith's Action at Law*, 60.

NON RESIDENTIA PRO CLERICIS REGIS. A writ directed to the

ordinary, commanding him not to molest a clerk employed in the king's service on account of his non-residence.—*Reg. Orig.*

NON SANE MEMORY. See tit. *Non Compos Mentis.*

NON SOLVENDO PECUNIAM AD QUAM CLERICUS MULCTATUR PRO NON RESIDENTIA. A writ prohibiting an ordinary to take a pecuniary mulct imposed upon a clerk of the king's for non-residence.—*Cowel.*

NON-SUIT (*non est prosecutus*). A renunciation or giving up the suit by the plaintiff; and this is usually done on his discovering some error or defect, or when he finds that his evidence is not sufficient to maintain his case. The stage of the proceedings at which a plaintiff is *non-suited* is usually just before the judge has summed up, but it may be done at any time before the jury have delivered their verdict. It is, however, entirely optional with the plaintiff whether he will submit to a non-suit or not; he cannot be compelled to do so, but may insist on the case going to the jury, and take his chance of the verdict. In cases however where it is doubtful whether the verdict will be a favourable one, it is usual for the plaintiff to choose (or *elect* as it is termed) to be non-suited, because after a non-suit he may commence another suit against the defendant for the same cause of action, which may be advisable if he can come better prepared with evidence, or can otherwise repair the defect which was the cause of his failure; but if a verdict be once given, and judgment follow thereon, he is for ever barred from suing the defendant upon the same ground of complaint.—1 *Arch. Pract.* 438, 465; *Stephen on Pleading*, 120.

NON SUM INFORMATUS (*I am not informed*). Judgment by default is either by *nil dicit*, that is, where the defendant is stated to have appeared, but to have said nothing in bar or preclusion of the action; or by *non sum informatus*, where he is said to appear by attorney, but the attorney says *that he is not informed* by the defendant of any answer to be given. This latter is used only in cases where judgment is entered in pursuance of a previous agreement between the parties.—2 *Arch. Pract.* 733; *Les Termes de la Ley.*

NON TENURE. A plea in bar to a real action, by the defendant's saying that he *did not hold* the land mentioned in the plaintiff's declaration, or at all events some part of it.—*Cowel.*

NON-TERM (*non terminus*). The time of vacation between the terms was formerly so called.— *Lamb. Archaionomia*, 126.

NOTARY. In ancient times a notary was a scribe or scrivener, who took minutes, and made short drafts of writings and instruments both of a public and private nature. In the present day, however, he is called a notary public, who confirms and attests the truth of any deeds or writings, in order to render the same available as evidence of the facts therein contained, in any other country. Some of the chief duties of notaries are connected with mercantile transactions, as in noting bills of exchange and promissory notes which have been presented for payment and dishonoured.—*Ayl. Parer.* 382, *cited in Rog. Ecc. Law*, 595.

NOTE OF A FINE. The *note* of a fine was an abstract of the writ of covenant and the concord, naming the parties, the parcels of land, and the agreement.—2 *Bl.* 351. See also tit. *Fine.*

NOT GUILTY. A plea which occurs in the action of trespass or trespass on the case *ex delicto*, by which the defendant denies being guilty of the trespasses, &c. laid to his charge in the plaintiff's declaration.—*Stephen on Pleading*, 170; 1 *Arch. Pract.* 331.

NOTICE OF MOTION *in Parliament*. See tit. *Motions in Parliament*.

NOTICES OF OBJECTIONS *to Patent*. By the 5 & 6 Wm. 4, c. 83, s. 5, it is provided, that in any action brought against any person for infringing any letters patent, the defendant on pleading thereto shall give to the plaintiff, and in any *scire facias* to repeal such letters patent the plaintiff shall file with his declaration a notice of any objections on which he means to rely at the trial of such action, and no objection shall be allowed to be made on behalf of such defendant or plaintiff respectively at such trial, unless he prove the objections stated in such notice. The object of this notice, or particular of objections, as it is sometimes called, is to point out to the plaintiff the real nature of the objections to the patent which the defendant intends to set up upon the trial as an answer to the plaintiff's action, in order that the plaintiff may be prepared with the necessary evidence to meet such objections. It is somewhat analogous to a particular of set-off, and, like it, is rendered necessary on account of the generality of the defendant's pleas. See *Bulnois* v. *Mackenzie*, 6 *Dowl.* 215; *Fisher* v. *Dewick and another*, 4 *Bing. N. C.* 706; *Leaf* v. *Topham*, 14 *Mes. & W.* 147.

NOVATION. The acceptance of a new debt or obligation in satisfaction of a prior existing one. Thus, it is said that a surety is discharged by the *novation* of the debt; for he can no longer be bound for the first debt, for which he was surety, since it no longer subsists, having been extinguished by the *novation*; neither can he be bound for the new debt into which the first has been converted, since this new debt was not the debt to which he acceded.—*Pothier on Obligations*.

NOVEL ASSIGNMENT. See tit. *New Assignment*.

NOVEL DISSEISIN (*a new or recent disseisin or dispossession*). See tit. *Assize of Novel Disseisin*.

NUDE CONTRACT. See tit. *Nudum Pactum*.

NUDE MATTER. Naked matter, a mere bare or simple allegation of any thing.

NUDUM PACTUM (*a bare agreement*). An agreement to do or pay anything on one side, without any consideration or compensation on the other. This is thence called a *nude* or *naked contract*, (*nudum pactum*), and when not under seal (i. e. when it is a simple contract) is totally void in law, and a man cannot be compelled to perform it. — 2 *Chitty's Bl.* 445, *and note* 9; *Cowp.* 292; *Bull. N. P.* 147.

NUISANCE (from the Fr. *nuire*, to hurt). Any thing which unlawfully annoys or does damage to another is a nuisance. A nuisance is either *public* or *private*. A public or common nuisance is such as affects or interferes with the king's subjects in general; a private nuisance is such as only affects or interferes with an individual in his individual capacity. —3 *Bl.* 5, 6; *Les Termes de la Ley*.

NUL DISSEISIN, *Plea of*. A plea that occurred in real actions, by which the defendant denied the *dis-*

seisin alleged of him by the plaintiff. —3 *Bl.* 305.

NUL TIEL RECORD (*no such record*). A plea pleaded in the trial by the record. This is only used in one particular instance, and that is where a matter of record is pleaded in any action, as a fine, a judgment, or the like, and the opposite party pleads "*nul tiel record*," i. e. that there is no such matter of record existing; whereupon issue is joined, which is called an issue of *nul tiel record*, and in such case the court awards a trial by *inspection and examination of the record*.—3 *Bl.* 330; *Stephen on Pleading*, 112.

NUL TORT, *Plea of*. A plea which a defendant pleads in a real action, denying the *wrong* which the plaintiff alleges he had done.—3 *Bl.* 305.

NULLITY. Any thing that is null, void, or of no force or effect.—*Litt. Dict.*

NULLO HABITO RESPECTU. No respect or regard being had.

NULLUM ARBITRIUM (*no award*). The plea of a defendant prosecuted for not abiding by the award on an arbitration bond.—*Tomlins.*

NUNC PRO TUNC (*now for then*). When a party has omitted to take some step which he ought to have taken, as to file an affidavit, or to enter up judgment, for instance, the court will sometimes permit him to do it after the proper time has passed by for that purpose, and will allow it to have the same effect as if it had been *regularly* done; and this in the case of the affidavit is called filing it *nunc pro tunc*; or in the case of entering up judgment, is called entering it *nunc pro tunc*; i. e. doing it *now for* (or instead of) *then*.— 1 *Arch. Pract.* 34.

NUNCUPATIVE WILL (*testamentum nuncupatum*). A will which depends merely upon oral evidence, having been declared or dictated by the testator previous to his death, before a sufficient number of witnesses, and afterwards reduced to writing.—2 *Bl.* 500; *Toller.* All wills, however, must now be reduced into writing at the time they are made.—1 *Vict. c.* 26, *s.* 1.

NUPER OBIIT (*he died lately*). A writ that lay for a co-heir who had been deforced by her co-parcener of lands or tenements, of which their grandfather, father, brother, or other common ancestor had died seised in fee simple.—*F. N. B.* 197; *Cowel.*

NURTURE, *Guardians for*. Are the father or mother until infants attain the age of fourteen years; and in default of father or mother, the ordinary usually assigns some discreet person to take care of the infant's personal estate, and to provide for its maintenance and education.—1 *Bl.* 461.

O.

OBEDIENTIA. Said formerly to have signified a rent; but in the canon law is used for an office or an administration of an office.—*Cowel.*

OBJECTIONS TO PATENT. See tit. *Notice of Objections.*

OBLATA. In the exchequer signified old debts brought together from former years, and added to the present sheriff's charge. It also signified gifts made to the king by any of his subjects.—*Cowel.*

OBLIGATION (*obligatio*). An *obligation* or bond is a deed whereby a person obliges himself, his heirs,

executors, and administrators, to pay a certain sum of money to another at an appointed day; and he who so obliges himself, or enters into such bond, is termed the *obligor*, and the party to whom he so obliges, or binds himself, is termed the *obligee*.—2 *Bl.* 340. See also tit. *Bond.*

OBLIGOR and OBLIGEE. See tit. *Obligation.*

OCCASIO. According to Spelman means an impediment. It also signifies a tribute which the lord imposed on his vassals or tenants; and *occasionari* signified to be so loaded or charged with tributes or penalties. —*Spelman; Cowel.*

OCCUPANCY. Is defined to be the "taking possession of those things which before belonged to nobody;" hence the title which a person so acquires in things is called title by occupancy. Occupancy is frequently divided into *general* and *special* occupancy. General occupancy occurred where a person was tenant *pour auter vie*, and died during the life of the *cestui que vie*, in which case the person who first entered on the land after his death might lawfully retain possession thereof, as long as the *cestui que vie* lived by right of occupancy, because it belonged to nobody. Special occupancy occurred where an estate was limited to a man and his heirs, or the heirs of his body during the life of another person, by which the heir or heirs of the body of such grantee might enter on the death of the ancestor, and hold possession as *special occupant*; having an exclusive right, by the terms of the original contract, to occupy the lands during the residue of the estate granted.—1 *Cruise*, 114; 2 *Bl.* 258.

OCCUPANT. See tit. *Occupancy.*

OCCUPAVIT. A writ that lay for him who was ejected out of his lands or tenements in the time of war.—*Cowel.*

ODIO ET ATIA. An old writ mentioned in the stat. of Westm. and was directed to the sheriff, to inquire whether a man committed to prison on suspicion of murder was committed on just cause of suspicion, or only out of malice. And if upon an inquisition it were found that he was not guilty, then another writ was directed to the sheriff to bail him.—*Les Termes de la Ley.*

OFFENCE (*delictum*). Offences are either *capital* or not capital; capital offences are such as inflict the punishment of death on the offender, such as high treason, felony, &c. Offences not capital are those of a less important nature, and which are generally termed *misdemesnors*.—4 *Bl.* 237.

OFFICE (*officium*). An office is defined to be the right to exercise a public or private employment, and to take the fees and emoluments belonging thereto; and it is considered in law a species of incorporeal hereditament.—2 *Bl.* 36.

OFFICE, *Inquest of.* An inquisition or inquest of office is an inquiry made by the king's officer, his sheriff, coroner, or escheator, by virtue of his office (*virtute officii*) or by writ sent to him for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels, &c. This inquiry is made by a jury formed of an indefinite number of persons; it used formerly frequently to be made during the existence of the military tenures, but is now grown almost out of use.—3 *Bl.* 257. For further information on this subject see tit. *Inquest.*

OFFICIAL or OFFICIAL PRINCIPAL. A judicial officer of high ecclesiastical authority in the province of Canterbury, appointed by and under the authority of the archbishop. He has extraordinary jurisdiction in almost all ecclesiastical causes, and all manner of appeals from bishops and their surrogates are directed to him. His ordinary jurisdiction extends throughout the whole province of Canterbury; but his citation, except upon appeal, or by letters of request, is confined to his own diocese. This office was at one time separate from that of the Dean of the Arches Court of Canterbury; but as the two courts met at the same place (formerly *Bow* Church, *de Arcubus*), and the Dean of the *Arches* frequently performed the duties of the *official*, in the course of time they became, and ever since have remained, completely united and identified. The court of the official principal is therefore called the Arches Court of Canterbury, and is of very ancient origin, having subsisted before the time of Henry II. It is held in the hall belonging to the College of Civilians, or Doctors of the Civil Law, at Doctors' Commons.—*Burn's Ecc. L. tit.* "*Arches*;" 1 *Hag.* 48; 1 *Show.* 251; 4 *Inst.* 337; 2 *Lee*, 287; *Rogers's Ecc. Law, tit.* "*Arches.*"

OFFICIARIIS NON FACIENDIS VEL AMOVENDIS. A writ directed to the magistrates of a corporation, commanding them not to make such a man an officer, and to put him out of the office which he holds, until inquiry be made into his character.—*Reg. Orig.* 126; *Cowel.*

OFFICIO, *Oath Ex.* An oath formerly administered to persons, by which they might be compelled to to confess, accuse, or purge themselves of any criminal matter or thing, by which they might be liable to any censure or punishment. This oath was made use of in the spiritual courts as well in criminal cases of ecclesiastical cognizance, as in matters of civil right; but was abolished with the high commission court by stat. 16 Car. 1, c. 11.—3 *Bl.* 101, 447.

OLERON LAWS (*leges olearenses*). The laws made by Rich. 1, when at Oleron, relating to maritime affairs. —*Les Termes de la Ley; Co. Litt.* 260.

ONERANDO PRO RATA PORTIONIS. A writ that lay for a joint tenant, or tenant in common, who was distrained upon for more rent than his proportion of the land rendered him liable to pay.—*Cowel.*

O NI. It was the custom in the exchequer, as soon as the sheriff entered upon his accounts for issues, amerciaments, and mesne profits, to mark upon each head *O Ni.* which was the short for *oneretur nisi habet sufficientem exonerationem* (let him be charged unless he has a sufficient discharge), and forthwith he became the king's debtor, and a debt was set on his head.—*Les Termes de la Ley.*

ONUS EPISCOPALE. Ancient customary payments from the clergy to their diocesan bishop.—See tit. *Episcopalia.*

ONUS PROBANDI. The burden of proving. Thus the *onus probandi* is said sometimes to lie on the plaintiff, and sometimes on the defendant, i. e. the burden or obligation of proving the thing in question.

OPENING A COMMISSION. Entering upon the duties under a commission, or commencing to act under a commission, is so termed. Thus, the judges of assize and nisi prius derive their authority to act under or

by virtue of commissions directed to them for that purpose; and, when they *commence* acting under the powers so committed to them, they are said to *open* the commissions; and the day on which they so commence their proceedings is thence termed the *commission day* of the assizes.

OPENING A RULE. The act of restoring or recalling a rule, which has been made absolute, to its conditional state, as a rule nisi, so as to admit of cause being shown against the rule. Thus, when a rule to show cause has been made absolute under a mistaken impression that no counsel had been instructed to show cause against it, it is usual for the party, at whose instance the rule was obtained, to consent to have the rule *opened;* by which all the proceedings subsequent to the day when cause ought to have been shown against it, are in effect nullified, and the rule is then argued in the ordinary way.

OPENING PLEADINGS. In trials at Nisi Prius, it is the practice for the plaintiff's junior counsel to state briefly the substance and effect of the pleadings in the cause, in order that the jury may know what are the issues about to be tried, and this is termed "*opening the pleadings.*"

OPTION. The archbishop has a customary prerogative when a bishop is consecrated by him, to name a clerk or chaplain of his own to be provided for by such suffragan bishop; in lieu of which, it is now usual for the bishop to make over by deed to the archbishop, his executors and assigns, the next presentation of such dignity or benefice in the bishop's disposal within that see, as the archbishop himself shall choose, which is therefore called his *option.*—1 *Bl.* 381; *Cowel.*

OPTIONAL WRIT. Original writs were either optional or peremptory, or, in legal language, were either a *præcipe* or a *si te fecerit securum.* The *præcipe* or optional writ was in the alternative commanding the defendant to do the thing required, *or* show reason why he has not done it.—3 *Bl.* 274.

ORATOR. The plaintiff in a bill in chancery, when addressing or petitioning the court, styles himself "*orator,*" and, when a woman, "*oratrix.*"

ORATRIX. See tit. *Orator.*

ORDEAL or ORDEL (*ordalium*). The most ancient species of trial was that by *ordeal,* which was distinguished by the appellation of *judicium Dei,* and sometimes by *vulgaris purgatio,* to distinguish it from the canonical purgation, which was by the oath of the party. It was of two kinds: *fire ordeal* and *water ordeal;* the former being confined to persons of rank, the latter to the common people. Fire ordeal was performed either by taking up in the hand a piece of red hot iron of one, two or three pounds weight, or else by walking barefoot and blindfold over nine red hot ploughshares, laid lengthwise, at unequal distances; and if the party escaped unhurt he was adjudged innocent, if otherwise he was condemned as guilty. *Water ordeal* was performed either by plunging the bare arm up to the elbow in boiling water, or by casting the suspected person into a river or pond of cold water: and if in the former instance his arm was burned, or if in the latter instance he floated without any action of swimming, it was deemed evidence of his guilt; if otherwise, of his innocence.—4 *Bl.* 342; *Les Termes de la Ley.*

ORDEFFE or ORDELFE (from the

Saxon *ore*, i. e. metal, and *delfan*, i. e. to dig out). Signifies a liberty by which a man claims the *ore* found in his own ground.—*Cowel.*

ORDER, *Judge's.* See tit. *Summons and Order.*

ORDERS OF THE DAY. Members of the House of Commons who wish to propose any question, or to "move the house," as it is termed, must, in order to give the house due notice of his intention, state the form or nature of his motion on a previous day and have it entered in a book termed the *order* book; and the motions so entered, the house arranges shall be considered on particular days, and such motions or matters, when the day arrives for their being considered, are then termed the "*orders of the day.*"—*May on Parl.*

ORDINANCE OF PARLIAMENT. Sir Edward Coke says that an ordinance of parliament is to be distinguished from an act of parliament, inasmuch as the latter can be only made by the king and a threefold consent of the state, whereas the former may be ordained by one or two of them.—*Cowel.*

ORDINARY (*ordinarius*). In the civil law signifies any judge who has authority to take cognizance of causes in his own right, and not by deputation. But in the common law it signifies the bishop of a diocese, though more frequently a commissary or official of the bishop or other ecclesiastical judge who has judicial authority within his jurisdiction.—*Stat. West. c.* 2, 19, 31; *Co. lib.* 9, 36.

ORDINARY OF NEWGATE. A divine who is appointed to attend the condemned criminals in that prison, to prepare them for death, &c.

ORGALLOUS or ORGUILLOUS (from the French *orgueil*, pride). Proud or high-minded. This word is used by some of our old law writers.—*Cowel.*

ORIGINAL WRIT. An original writ was the process formerly in use for the commencement of personal actions. It was a mandatory letter from the king, issuing out of chancery, sealed with the great seal, and directed to the sheriff of the county wherein the injury was committed, or was supposed to have been committed, requiring him to command the wrong doer or accused party either to do justice to the plaintiff, or else to appear in court, and answer the accusation against him. This writ is now disused excepting in the actions of ejectment and replevin; the writs of *summons* and *capias* being the process prescribed by the Uniformity of Process Act for commencing personal actions. — 3 *Bl.* 272; 1 *Arch. Pract.* 2, 3.

ORIGINALIA. The records or transcripts sent to the treasurer's remembrance office out of chancery are so called, in contradistinction to *recorda*, which contains the judgments and pleadings in suits tried before the barons of that court.—*Cowel.*

ORPHANAGE PART. That portion of an intestate's effects which his children are entitled to by the custom of London.—2 *Bl.* 518, 519.

OUSTED (from the Fr. *ouster*, to put out). To be removed or put out; thus *ouster* of the freehold signifies being put out of possession of the freehold; *ousted* of an estate for years, signifies being turned out from the occupation of the land during the continuance of the term.—3 *Bl.* 198.

OUSTER. See tit. *Ousted.*

OUSTER LE MAIN (*to remove the hand*). When the male heir arrived at the age of twenty-one, or the heir female at sixteen, they might sue out their livery of *ouster le main;* that is, the delivery of their lands out of their guardian's hands.—2 *Bl.* 68, 69. See also tit. *Livery.*

OUSTER LE MER (*beyond the sea*). A cause of excuse or essoin which a man alleged for not appearing in court when summoned, viz. that he was beyond the seas.—*Cowel.* See also tit. *Essoin.*

OUT OF COURT. He who has no legal status in court is said to be "out of court," i. e. he is not before the court. Thus, when the plaintiff in an action, by some act of omission or commission shows that he is unable to maintain his action, he is frequently said to put himself "out of court."

OUT-DWELLERS and IN-DWELLERS. A distinction sometimes arises between persons who occupy land and dwell in one and the same parish, and such as occupy land in one parish and dwell in another; the former being called *in-dwellers*, and the latter *out-dwellers.*—See 14 *Mee. & W.* 393.

OUTER BAR. Barristers at law are divided into two classes, viz.: queen's counsel, who are admitted *within* the bar of the courts, in seats specially reserved for themselves; and junior counsel, who sit *without* the bar; and the latter are thence frequently termed barristers of the "outer bar," or "utter barristers," in contradistinction to the former class.—See also tit. *Utter-Barristers.*

OUTFANGTHEF. See tit. *Infangthef.*

OUTLAWRY (*utlagaria*). The process of putting a man out of the protection of the law, so that he is incapable to bring an action for redress of injuries; and it is also attended with a forfeiture of the party's goods and chattels to the king.—3 *Bl.* 284; *Les Termes de la Ley.*

OUTSTANDING TERMS. See tit. *Term.*

OVELTY OF SERVICES. Equality of services; as when the tenant *paravail* owed as much to the *mesne lord* as the mesne lord did to the lord paramount.—*Cowel.*

OVER. See titles *Holding over* and *Pleading over.*

OVER VERT. See tit. *Vert.*

OVERCYTED (from the Sax. *ofer*, over, above, and *cythan*, to offend). A person convicted of a crime.—*Cowel.*

OVERT (*Fr.*) Open, &c. Thus an overt act (*factum opertum*) signifies an open or manifest act, such as can be manifestly proved.—3 *Inst.* 12; *Cowel.*

OVRES (from the Fr. *œuvre*). Any acts, deeds or works.—8 *Rep.* 131.

OWELTY. See tit. *Ovelty of Services.*

OWLING. The offence of transporting wool or sheep out of the kingdom, to the detriment of its staple manufacture; so called from its being usually carried on in the night.—*Mirr. c.* 1, *sec.* 3; 4 *Bl.* 154.

OYER (*to hear*). This word, says Dr. Cowel, seems formerly to have signified what our word *assize* does now; *sed quære*, as to oyer of deeds,

and oyer and terminer. See the two following titles.

OYER OF DEEDS AND RECORDS. *Hearing* of deeds and records. Thus when either party in an action alleges any deed, he is in general obliged to make *profert* of such deed; that is, to produce it in court simultaneously with the pleading in which it is alleged. When oral pleading was in practice, the deed was *actually* produced in court, but now it consists merely of a formal allegation that he shows the deed in court; it being in fact retained in his own custody. When *profert* is thus made by one of the parties, the other, before he pleads in answer, is entitled to *demand oyer*, that is, *to hear it read*, and this, either for the purpose of enabling him to ascertain the genuineness of the alleged deed, or of founding on some part of its contents (not set forth by the adverse party), some matter of answer. Oyer of records was of the same nature, being a demand *to hear* any record read which had been alleged in the pleading of the opposite party; but this is not now granted of a *record*, and can be had only in the cases of *deeds*, *probates*, and *letters of administration*, &c.—*Stephen on Pleading*, 74, *et seq.*; 2 *Arch. Pract.* 1059.

OYER AND TERMINER (from the Fr. *ouir*, to hear, and *terminer*, to determine). A commission of *oyer and terminer* is a commission under the king's great seal, directed to certain persons, among whom two common law judges are usually appointed, empowering them to *hear and determine* treasons, felonies, robberies, murders, and criminal offences in general.—4 *Bl.* 269. See *Justices of Oyer and Terminer*, under tit. *Justices*.

O, YES. It is said to be a corruption of the French *oyez*, i. e. hear ye; and is sometimes used in courts by the public crier, to command attention when a proclamation is going to be made.—*Les Termes de la Ley*.

P.

PAINE FORT ET DURE (Fr. *punishment strong and severe*). A special punishment for those who, being arraigned for felony, refused to put themselves upon the ordinary trial of God and the country, and are, therefore, considered as mute in the interpretation of the law. This punishment was vulgarly called pressing to death.—*Britton*, 11; *Les Termes de la Ley*.

PAIRS. See tit. *Pairing off*.

PAIRING OFF. Members of the House of Commons cannot vote upon any question unless they are themselves present when the question is put. When, therefore, a member wishes to absent himself from the house, and at the same time is anxious not to diminish the strength of his party by the loss of his vote during his absence, he seeks out some member of the opposite party who is also anxious to absent himself, and by mutual agreement, the two (or "*pair*" of) members arrange to be absent at the same time, the effect of which, of course, is, that on all questions which occur during their absence, a vote is neutralized on each side; and thus, the relative numbers on any given division are precisely the same as if both members were present. This system is known by the name of "*pairs*," and members acting under this arrangement are thence said to "*pair off*" upon any question in which a division of the house takes place during their absence.

PAIS (Fr. *country*). A trial *per pais* signifies a trial *by the country*, or, as it is more commonly called, *by jury*. An assurance by matter *in pais*, or deed, is an assurance transacted between two or more private persons *in pais* (in the country), i. e. upon the very spot to be transferred. —2 *Bl.* 294. Matter *in pais* seems to signify matter *of fact*, probably so called because matters of fact are triable by the country, i. e. by a jury. —See *Dobson* v. *Dobson, Ca. Temp. Hard.* 19; *Sanderson* v. *Collman*, 4 *Scott's N. R.* 649, *per Tindal, C. J.*; *Steph. Pl.* 222.

PALACE COURT. See tit. *Marshalsea.*

PALATINE. See tit. *Counties Palatine.*

PANDECTS. The books of the civil law compiled by Justinian are so called.—1 *Bl.* 81; *Cowel.*

PANEL (*panella*). The slip of parchment on which the sheriff returns the name of the jurors to serve on a jury is so called. See also tit. *Impannel.*

PANIER (*panetarius*). Is an attendant or domestic who waits at table and gives bread (*panis*), wine and other necessary things to those who are dining. The phrase was in familiar use amongst the Knights Templars, and from them has been handed down to the learned societies of the Inner and Middle *Temples*, who at the present day occupy the halls and buildings once belonging to that distinguished order, and who have retained a few of their customs and phrases. "From the time of Chaucer to the present day, the lawyers have dined together in the ancient hall, as the military monks did before them, and the rule of their order requiring 'two and two to eat together,' and all the fragments to be given in brotherly charity to the domestics, is observed to this day, and has been from time immemorial. The attendants at table, moreover, are still called '*paniers*,' as in the days of the Knights Templars."—*Addison's Knights Templars; Ducange, Gloss.* "*Panetarius.*"

PANNAGE or PAWNAGE (*pannagium*). Words used by our law writers to signify the money which the agistors of the forest collect for the feeding of swine within the forest; and sometimes it is used for the food itself. —*Les Termes de la Ley.*

PAPER BOOK. An issue in law (or demurrer) when copied on paper for the purpose of delivering to the judges, is called a paper book, or a demurrer book.—3 *Bl.* 317.

PAPER DAYS. Particular days in each term set apart for hearing the argument of such demurrers and special cases as have been duly put down in the paper for argument.—*Bagley's Pr.* 47.

PAPER OFFICE. An office at Whitehall for the custody of public papers, writings, &c.—*Cowel.*

PARAGE (*paragium*). Equality of name, blood, or dignity: but is more especially applied to equality in the partition of an inheritance between co-heirs; hence the word *disparage.* —1 *Inst.* 166.

PARAGIUM. See tit. *Parage.*

PARAMOUNT (from the Fr. *par* and *monter*). The *supreme* lord of a fee, in contradistinction to the *mesne* lord, who held of some superior under certain services. — *F. N. B.* 135; *Cowel.*

PARAPHERNALIA (from the Gr.

παρὰ, besides, and φερνὴ, dower, i. e. something to which the wife is entitled over and above her dower). Under the term *paraphernalia* are included such apparel and ornaments of the wife as are suitable to her condition in life. Thus, pearls and jewels, usually or sometimes worn by the wife, although articles of mere ornament, have been held to fall within the term *paraphernalia*; and in the case of *Mangey* v. *Hungerford*, the widow claimed her gold watch and several gold rings as paraphernalia, which had been given to her at the funerals of relations, and they were decreed to her.—2 *Eq. Ca. Abr.* 156, *in marg.*; 2 *Roper on Husband and Wife*, 140, 141; *Com. Dig. tit. Baron and Feme*, *F.* 3; 2 *Bl.* 435, 436.

PARAVAIL (from the Fr. *par* and *avayler*). Tenant *paravail* signified the lowest tenant of land, being the tenant of a *mesne* lord: he was so called because he was supposed to make *avail* or profit of the land.—*Cowel*; 2 *Bl.* 60.

PARCENERS. See tit. *Coparceners.*

PARCENARY. The holding of lands jointly by *parceners* or *coparceners*. See tit. *Coparceners.*

PARCO FRACTO. A writ that lay against a person for breaking open a pound and taking out the beasts which were therein lawfully impounded.—*F. N. B.* 100.

PARES. Equals, freeholders, peers, &c.

PARK (*parcus*). The word commonly signifies an inclosure; but to constitute a legal park, or rather a park in the eye of the law, it must have been made so by the king's grant, or at least by immemorial prescription.—2 *Bl.* 38; *Les Termes de la Ley.*

PARKBOTE. To be quit of inclosing a *park* or any part thereof.—4 *Co. Inst.* 308.

PARLIAMENTARY AGENTS. Persons who act as solicitors in promoting and carrying private bills through parliament. They are usually attorneys or solicitors, who confine their practice to this particular department.

PARLIAMENTARY TAXES. Such taxes as are imposed directly by act of parliament, i. e. by the legislature itself, as distinguished from those which are imposed by private individuals or bodies under the authority of an act of parliament. Thus, a sewers' rate, not being imposed directly by act of parliament, but by certain persons termed commissioners of sewers, is not a *parliamentary tax*; whereas the income and window taxes, which are directly imposed, and the amount fixed by act of parliament, are parliamentary taxes. — *Palmer* v. *Earith*, 14 *Mes. & W.* 428.

PARLIAMENTUM INDOCTUM. The parliament held at Coventry, 6 Hen. 4, was called *parliamentum indoctum*, or the lack-learning parliament, because no apprentice or other man of the law was permitted to be elected a knight of the shire therein.—4 *Inst.* 48.

PAROL (Fr. signifying *word, speech*, &c.) This word signifies *verbal*, in contradistinction to that which is written. Thus, a *parol* agreement signifies an agreement by word of mouth; *parol* evidence signifies evidence by word of mouth, in contradistinction to written evidence. The pleadings in an action are also in our old law French denominated the *parol*, because they were formerly actual

vivâ voce pleadings in court, and not mere written allegations as at present.—3 *Bl.* 293, 369.

PAROL DEMURRER. A plea to stop or stay the pleadings in an action: the phrase is thus used by Blackstone. In many real actions brought by or against an infant under the age of twenty-one years, and also in actions of debt brought against him, as heir to any deceased ancestor, either party may suggest the *non-age* of the infant and pray that the proceedings may be deferred till his full age or (in our legal phrase) that the infant may have his age and that the *parol* may demur, that is, *that the pleadings may be stayed;* and then they shall not proceed till his full age, unless it be apparent that he cannot be prejudiced thereby. This plea of *parol demurrer* was abolished by the stat. 11 Geo. 4 & 1 Wm. 4, c. 47, s. 10.—2 *Arch. Pract.* 936; *Finch, L.* 360.

PAROL EVIDENCE. See tit. *Parol.*

PARSON (*persona*). In its legal acceptation signifies the rector of a parochial church. He is called parson, *persona*, because by his person the church, which is an invisible body, is represented. – *Co. Litt.* 300*a*, *sec.* 528; 1 *Bl.* 384.

PARSON IMPARSONEE. When a clerk is not only presented but instituted and inducted into a rectory, he is then, and not before, in full and complete possession, and is called in law *persona impersonata*, or *parson impersonee.*—*Co. Litt.* 300; 1 *Bl.* 391.

PARTES FINIS NIHIL HABUERUNT (the parties to the fine had nothing). An exception taken against a fine levied.—*Cowel.*

PART OWNERS. A sort of joint interest which persons concerned in shipping matters have therein. — *Cunningham.*

PARTICULAR ESTATE. A limited legal interest or property in lands or tenements, as distinguished from the absolute property or fee simple therein, is usually so termed; and he who holds or enjoys such a limited interest therein is thence sometimes called the *particular tenant.* Thus, if A. has the absolute property or fee simple in certain lands, and he demises them to B. for a term of seven years, the legal interest which B. would thus acquire therein would be called the *particular* estate with reference to A.'s estate in fee simple; i. e. it would be a *particle* or portion carved or taken out of A.'s fee. See also tit. *Remainder.*—2 *Bl.* 164.

PARTICULAR TENANT. See tit. *Particular Estate.*

PARTICULARS OF DEMAND. See tit. *Bill of Particulars.*

PARTICULARS OF OBJECTION. See tit. *Notice of Objections.*

PARTIES or PRIVIES. Parties to a deed or contract are those with whom the deed or contract is actually made or entered into. By the term *privies*, as applied to contracts, is frequently meant those between whom the contract is mutually binding, although *both* are not literally parties to such contract. Thus in the case of a lease, the lessor and lessee are both parties and privies, the contract being literally made between the two, and also being mutually binding; but if the lessee assign his interest to a third party, then a *privity* arises between the assignee and the original lessor, although such assignee is not literally a *party* to the original lease.—See also tit. *Privies.*

PARTITION (*partitio*). The dividing of lands held by joint tenants, coparceners, or tenants in common, into distinct portions, so that they may hold them in severalty: and the instrument by which this *partition* or division is effected is called a *deed of partition*.—4 *Cruise*, 83.

PARTITIONE FACIENDA. A writ that lay for those who held lands *pro indiviso*, and wished a division of them to be made, against those who refused to join in partition of the same. —*Cowel.*

PARTY AND PARTY, *Between*. This phrase signifies between the contending parties in an action, i. e. the plaintiff and defendant, as distinguished from the attorney and his client. These phrases are commonly used in connection with the subject of costs; and in order to give a precise idea of their scope and meaning, it will be necessary to consider briefly the nature of costs. All the charges and expenses which the attorneys in a cause are put to, the one in and about the prosecuting, and the other in defending an action at law, come under the general denomination of costs. Such of these charges and expenses as are *necessarily* incurred in the prosecuting and defending the action, and which arise as it were out of the proceedings themselves, are denominated *costs in the cause*, the payment of which usually devolves upon the defeated or unsuccessful party. In addition to these, there are others, which, though not arising directly out of the proceedings themselves, are usually paid by each party to his own attorney, whatever may have been the result of the cause, and these are commonly called costs as *between attorney and client*, as distinguished from the costs in the cause, or, as they are sometimes called, costs as between *party and party*.

PASS, *To*. To go, to be transferred, to be conveyed. *Ex. gr.* By a conveyance of a house do the fixtures pass? i. e. do they go, or are they conveyed, as part and parcel of the house? Again, does the fee *pass* under the word "estate?" i. e. does the fee simple in land become transferred, or pass away under the term "estate?"

PASSING ACCOUNTS. When an auditor, appointed to examine into any accounts, certifies to their correctness, he is said to "pass" them; i. e. they *pass* through the examination without being detained or sent back for inaccuracy.

PASSING RECORD. When the proceedings are entered upon the nisi prius record, it is taken to the master's office, and is there examined, or supposed to be examined by the proper officer, who then signs it; and the record is then said to be "passed." —*Boote's Suit at Law; Lush's Pr.; Sell. Pr.*

PATENT. See tit. *Letters Patent.*

PATRON (*patronus*). He who has the right, title, power, or privilege of presenting to an ecclesiastical benefice. See tit. *Advowson.*

PAUPERIS FORMA. See tit. *Forma Pauperis.*

PAWNAGE. See tit. *Pannage.*

PAYMENT OF MONEY INTO COURT. When the defendant, in an action brought for a given sum, admits either the whole or a part of the plaintiff's claim, he often, with the view of preventing the plaintiff from further maintaining his action, pleads what is termed a "plea of payment into court," by which he alleges that he brings a sum of money into court ready to be paid to

the plaintiff if he will accept the same, and that the plaintiff has no claim to a larger amount; and this plea is accompanied by an actual payment of the specified sum into the hands of the proper officer of the court, where the plaintiff, upon application, may obtain it. Should the plaintiff, after this, proceed with the action, he does so at the peril of being defeated, unless he should, upon the trial, prove that a further sum still remains due to him from the defendant.

PEACE OF GOD AND THE CHURCH (*pax Dei et ecclesiæ*). Anciently meant to signify that rest and cessation which the king's subjects had from trouble and suit of law between the terms.—*Spelman; Cowel.*

PECULIAR (Fr. *peculier*, i. e. proper, private, one's own). A particular parish or church that has jurisdiction within itself for granting probates of wills, &c. exempt from the ordinary or bishops' courts. The *court of peculiars* is a court annexed to the court of arches, and has jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary jurisdiction and subject to the metropolitan only, in which court all ecclesiastical causes arising within these *peculiar* or exempt jurisdictions are originally cognizable.—*3 Bl. 65; Les Termes de la Ley.*

PECUNIARY CAUSES. Such as arise either from the withholding ecclesiastical dues, or the doing or neglecting some act relating to the church whereby some damage accrues to the plaintiff; towards obtaining satisfaction for which, he is permitted to institute a suit in the spiritual court. Such, for instance, are the subtraction and withholding of tithes from the parson or vicar; the non-payment of ecclesiastical *dues* to the clergy, as pensions, mortuaries, compositions, and the like.—*3 Bl.* 88, 89.

PEERS (*pares*). Those who are impaneled in an inquest upon any man for the convicting or clearing him of any offence for which he is called in question. The jury was so called from the Latin *pares*, i. e. equals, because it is the custom of this country to try every man by his equals, that is to say, by his *peers*. The word peer seems also not merely to have signified one of the same rank; but it was also used to signify the vassals or tenants of the same lords, who attended him in his courts and adjudicated upon matters arising out of their lord's *fees*, and were thence called *peers of fees.—Cowel; Les Termes de la Ley.*

PEINE FORT ET DURE. See tit. *Paine forte et dure.*

PENAL ACTIONS. See tit. *Penal Statutes.*

PENAL BILL. An instrument formerly in use by which a party bound himself to pay a certain sum or sums of money, or to do certain acts, or in default thereof to pay a certain specified sum by way of *penalty*, thence termed a *penal* sum. These instruments have been superseded by *bonds with conditions.*—See *Step. Pl.* 279, 280.

PENAL STATUTES. Statutes imposing certain penalties on the commission of certain offences; and actions brought for the recovery of such penalties are denominated *penal actions.*—*1 Bl.* 81; *2 Arch. Pract.* 1039.

PENAL SUM. A sum of money payable as a *penalty.*

PENALTY OF A BOND. The sum

of money which the obligor of a bond undertakes to pay by way of penalty, in the event of his omitting to perform or carry out the terms imposed upon him by the conditions of the bond. As to the distinction between a *penalty* and a sum payable as *liquidated damages*, see *Reilly* v. *Jones*, 1 *Bing.* 302.

PENDENTE LITE. Pending the suit, whilst the suit is pending. See *Taylor* v. *Taylor*, 6 *Jur.* 633. See also tit. *Lis Pendens.*

PENSION OF CHURCHES. Certain sums of money paid to clergymen or parsons in lieu of tithes.—*F. N. B.* 51.

PENSION (*pensio*). That which in the Inner and the Middle Temple is called a *parliament*, and in Lincoln's Inn a *council*, is in Gray's Inn termed a *pension*; that is, an assembly of the members of the society to consult of their affairs. Certain annual payments of each member of the Inns is also so termed. There is also a writ called a *pension writ*, which seems to be a sort of peremptory order against those members of the society who are in *arrear* with their pensions and other dues.—*Cowel.*

PENSION-WRIT. See tit. *Pension.*

PEPPERCORN RENT. When only a nominal rent is wished to be reserved, the reservation is frequently confined to "one peppercorn."

PER, *In the.* See tit. *Entry, Writ of.*

PER AUTER VIE. For, or during the life of another, for such a period as another person shall live. See tit. *Pur auter vie.*

PER CURIAM. By the court. A figurative phrase commonly used in the reports, and meaning that the presiding judge or judges spoke to this or that effect.

Per totam Curiam is a similar expression, meaning that the *whole* court, i. e. *all* the presiding judges, were unanimous in the judgment, dictum, or expression of opinion; ex. gr. "and it was resolved *per totam curiam* that it could not be attached."

PER CUI ET POST. *Writs of Entry.* See tit. *Entry, Writ of.*

PER MY ET PER TOUT (*by the half and by all*). This phrase is applied to joint tenants, who are said to be seised *per my et per tout*; that is, by the *half* or *moiety*, and *by all*: that is, they each have the entire possession as well of every *parcel* or *piece* of the land as of the *whole* considered in the aggregate. For one of them has not a seisin of one half or moiety and the other of the other half or moiety; nor can one be *exclusively* seised of one acre, and his companion of another, but each has an *undivided* half or moiety of the whole, and not the whole of an undivided moiety.—*Bract. l. 5, tr. 5, c.* 26; 2 *Bl.* 182.

PER QUÆ SERVITIA. A judicial writ that issued out upon the note of a fine; and lay for the conusee of a manor or seignory to compel the tenant of the land at the time the fine was levied to attourn to him.—*Les Termes de la Ley.*

PER QUOD. When an action is brought by a person for defamation of character, and the offensive words do not apparently and upon the face of them import such defamation as will of course be injurious, it is necessary that the plaintiff should aver some particular damage to have happened; which is called laying his action with a *per quod:* as if I say that such a clergyman is a bastard,

he cannot for this bring any action against me, unless he can show some special loss by it; in which case he may bring his action against me for saying he was a bastard, *per quod* he lost the presentation of such a living. —3 *Bl.* 124.

PER TOTAM CURIAM. By the whole court. By all the presiding judges. See tit. *Per Curiam.*

PERAMBULATIONE FACIENDA. A writ which lies where two lordships lie near each other and some encroachments are supposed to have been made, by which writ the parties consent to have their bounds severally known. It is directed to the sheriff, commanding him to *make perambulation* and to set down their certain limits.—*F. N. B.* 133.

PERDONATIO UTLAGARIÆ. A pardon for him who for contempt in not coming to court was outlawed, and afterwards of his own accord yielded himself to prison.—*Cowel.*

PEREMPTORY (*peremptorius*). In law, this word signifies absolute, final, determinate, &c. The meaning of the word may be collected from perusing the following titles.

PEREMPTORY CHALLENGE. Is a privilege allowed to a prisoner in criminal cases, or at least in capital ones, *in favorem vitæ*, to challenge a certain number of jurors, without showing any cause for so doing.

PEREMPTORY MANDAMUS. When a mandamus has issued commanding a party either to do a certain thing or to signify some reason to the contrary, and the party to whom such writ is directed returns or signifies an insufficient reason, then there issues in the second place another mandamus, termed a *peremptory mandamus*, commanding the party to do the thing absolutely, and to which no other return will be admitted but a certificate of perfect obedience, and due execution of the writs.

PEREMPTORY PAPER. A list of the causes which are *enlarged* at the request of the parties or which *stand over* from press of business in court.

PEREMPTORY PLEAS. Pleas in bar are so termed in contradistinction to that class of pleas called *dilatory* pleas. The former, viz. peremptory pleas, are usually pleaded to the merits of the action with the view of raising a material issue between the parties; whilst the latter class, viz. dilatory pleas, are generally pleaded with the view of retarding the plaintiff's proceedings, and not for the purpose of raising an issue upon which the parties may go to trial and settle the point in dispute.—*Steph. Pl.* 52, *4th ed.*; *Bac. Abr. tit. Pleas*; *Bract.* 399 (*b*).

PEREMPTORY RULE TO DECLARE. When the plaintiff in an action is not ready to declare within the time limited, and the defendant wishes to compel the plaintiff to declare, he procures what is termed a *peremptory rule to declare*, which is in the nature of an order from the court, compelling the plaintiff to declare *peremptorily* under pain of judgment of non pros being signed against him.

PEREMPTORY WRIT. An original writ called a *si te fecerit securum*, from the words of the writ; which directed the sheriff to cause the defendant to appear in court without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim: this writ was in use where nothing was specifically demanded, but only a satisfaction in general; as in the case

of writs of trespass on the case, wherein no debt or other *specific* thing is sued for, but only damages to be assessed by a jury.—1 *Arch. Pract.* 285; 3 *Bl.* 273.

PERFECTING BAIL. Certain qualifications are required of persons who become bail with regard to property, &c. and when they have *justified*, i. e. established their sufficiency, a rule of court is made for their allowance, and bail is then said to be *perfected*; i. e. the process of putting in bail is completed and finished.

PERINDE VALERE (*to avail notwithstanding*). A phrase used in the ecclesiastical law, and signifies a dispensation granted to a clerk who, not being capable of holding a benefice or other ecclesiastical function, is *de facto* admitted to it. It is so called from the words which make the faculty as effectual to the party dispensed with, as if he had been actually qualified for the thing for which he received his dispensation at the time of his admission.—*Les Termes de la Ley.*

PERJURY (*perjurium*). Is defined by Coke to be a crime committed when a lawful oath is administered in some *judicial* proceeding to a person who swears *wilfully*, *absolutely*, and *falsely* in a matter *material* to the issue or point in question.—2 *Bl.* 137; 3 *Inst.* 164.

PERMISSIVE WASTE. See tit. *Waste.*

PERMUTATIONE ARCHIDIACONATUS ET ECCLESIÆ EIDEM ANNEXÆ CUM ECCLESIA ET PRÆBENDA. A writ to an ordinary, commanding him to admit a clerk to a benefice upon exchange made with another.—*Cowel.*

PERNANCY (from the Fr. *prendre*, to take). Pernancy signifies taking, receiving, enjoying, &c. Thus the *pernancy* of the profits of an estate, means the receipt or enjoyment of the profits; ex. gr. "estates in possession are those where the tenant is entitled to the actual *pernancy* of the profits."—2 *Cruise, tit. Remainder, s.* 1; and he who is so in the receipt of the profits is termed the *pernor of the profits.*

PERNOR OF PROFITS. See tit. *Pernancy.*

PERPARS. Part of the inheritance.—*Cowel.*

PERPETUATING TESTIMONY OF WITNESSES. When a party in a suit in equity is desirous of preserving the evidence of witnesses concerning a matter which cannot be immediately investigated in a court of law, or when he is likely to be deprived of the evidence of a material witness by his death or departure from the realm, it is usual to file a bill in equity to perpetuate and preserve the testimony of such witnesses; and the court then usually empowers certain persons to examine such witnesses and to take their depositions. —*Gray's Ch. Pract.* 234; 3 *Bl.* 450.

PERPETUITY. The condition of an estate being rendered *perpetually* (or for a very long period of time) unalienable by the act of the proprietors. It is sometimes, by a sort of metaphor, used to signify the estate itself which is so rendered unalienable. On the introduction of the feudal law into England, all real property was rendered unalienable, but gradually the proprietors of land acquired a power of alienation, which was found to be so beneficial to the country that the judges of the Courts of Common Law have for many centuries established it as a rule that real property shall in no case be rendered

perpetually unalienable by the act of the proprietors; or, as it is usually expressed, that *perpetuities* shall not be allowed. This rule is commonly called the *rule against perpetuities.*—4 *Cruise*, 355; *Hayes' Introd. to Convey.* 96, *3rd edit.*

PERPETUITY OF THE KING. That fiction of the law which for certain political purposes ascribes to the king in his political capacity the attribute of immortality: for though the reigning monarch may die, yet by this fiction *the king never dies;* that is, the *office* is supposed to be re-occupied for all political purposes immediately on his death.—1 *Bl.* 249.

PERQUISITES. Such advantages and profits as come to a manor by casualty, and not yearly; as escheats, heriots, reliefs, estrays, and such like things. The word *perquisite* is also used by some of our old law writers to signify anything obtained by industry, or purchased with money, in contradistinction to that which descends from an ancestor.—*Cowel; Les Termes de la Ley.*

PER QUOD. See this, after title *Per my et per tout.*

PERSONA IMPERSONATA. See tit. *Parson Imparsonee.*

PERSONABLE (*personabilis*). The ability to maintain an action in court. Thus it was a common expression, that "the defendant was judged *personable* to maintain this action."—*Cowel; Kitchin*, 214.

PERSONAL (*personalis*). Anything connected with the *person* as distinguished from that which is connected with land. Another characteristic of personal property (or *personalty* as it is sometimes called) is, that it is usually of a transitory or moveable nature, and capable of being taken away by the owner wherever he pleases to go; whereas *real* property (or realty as it is sometimes termed) is of a local and not a transitory nature, and does not possess the attribute of mobility or the capacity of being moved about with the *person* of the owner; and hence, from its substantial and permanent nature, it is termed *real.* Having stated thus much, it will be advisable further to illustrate the word, by explaining it in conjunction with other words with which it is usually associated.

Personal Actions, for instance, signify such actions as are brought for recovery of some debt, or for damages for some personal injury; in contradistinction to *real* actions, which relate to real or landed property, &c.

Personal Estate, Property, Things, or *Chattels*, &c. signify any moveable things of whatever denomination, whether alive or dead; as furniture, money, horses, and other cattle, &c. for all these things may be transmitted to the owner wherever he thinks proper to go, and may therefore be said to attend his person.—2 *Bl.* 387; 3 *Bl.* 117.

PERSONAL ACTION. See title *Personal*, and also tit. *Action.*

PERSONAL PROPERTY. Property of a *personal* or moveable nature, as opposed to property of a local and immoveable character, such as land or houses, and which are termed *real* property. See also tit. *Personal.*

PERSONAL TITHES. See tit. *Tithes.*

PERSONALTY. Signifies generally any *personal* property, in contradistinction to *realty*, which signifies real property. In our old law, an action was said to be in the *personalty* when it was brought against the right per-

son, or against whom in *law* it lay.—*Cowel.*

PERSONAM, IN. See tit. *In Personam.*

PETIT CAPE. See tit. *Cape.*

PETITION IN CHANCERY. During the progress of a suit in Chancery the interference of the court is frequently required in order to the regular and effectual prosecution or defence of the suit, and in order to the immediate attainment of many objects connected with it: when such interference is required, an order of court, embodying the particular object, is applied for, and such application is frequently made by what is termed a petition, which is a statement in writing, addressed to the Lord Chancellor or the Master of the Rolls, showing the cause which the petitioner has for some order of court.—*Gray's Ch. Pract.* 89; *Maddox, Prin.*

PETITION OF RIGHT. A parliamentary declaration of the liberties of the people assented to by King Charles the First, in the beginning of his reign.—1 *Bl.* 128.

PETITIONING CREDITOR. The creditor at whose instance a commission is issued against a bankrupt. The debt of the creditor so petitioning must amount to one hundred pounds.—*Arch. Bankruptcy*, 63.

PETTY BAG OFFICE. Is an office which belongs to the common law court in chancery, and out of which all writs in matters wherein the crown is interested do issue. Such writs, and the returns to them, were in former times preserved in a little sack or *bag* (*in purvâ bagâ*), whereas other writs, relating to the business of the subject, were originally kept in a hamper (*in hanaperio*), and thence has arisen the distinction of the *Hanaper* office and *Petty Bag* office, which both belong to the common law court in chancery.—5 & 6 *Vict. c.* 103; 3 *Steph. Bl.* 410.

PETTY LARCENY. See tit. *Larceny.*

PETTY SERJEANTY. See tit. *Serjeanty.*

PETTY SESSION. A special or petty session is sometimes kept in corporations and counties at large by a few justices, for dispatching smaller business in the neighbourhood between the times of the general sessions; as for licensing ale houses, passing the accounts of the parish officers, and so forth.—4 *Bl.* 272.

PETTY TREASON. See tit. *Treason.*

PICKAGE, PICAGE, or PICCADGE. A duty or toll payable for *picking* holes in the lord's ground in a market-place, for inserting the posts of the stalls therein erected. — *Palm. Rep.* 77; *Com. Dig. tit. Market* (F. 2).

PIE-POUDRE COURT (*curia pedis pulverizati*). See tit. *Court of Pie-poudre.*

PILOTAGE. The act of steering or guiding a ship by the pilot or helmsman, either during an entire voyage, or on the departure from, or the approach to port. The dangerous navigation of the coasts and of the rivers of England has led to the appointment of qualified persons, who receive a license to act as pilots within a certain district, and who enjoy the monopoly of conducting vessels out of, and up the various rivers, and to and from the various harbours of the country. By different acts of parliament the master of every ship

engaged in foreign trade must put his ship under the charge of a local pilot so licensed, both in his outward and homeward voyage. The power of appointing these "duly licensed pilots" is mainly vested in the corporation of the Trinity House, Deptford, whose jurisdiction extends from Orfordness to London Bridge, from London Bridge to the Downs, from the Downs westward to the Isle of Wight; and all bodies or persons having the power of appointment in other places (as the commissioners of Cinque Ports, the Trinity Houses of Hull, Newcastle, and Liverpool) are, to some extent, subject to their authority. Where the master is bound by act of parliament to place his ship under the command of a licensed pilot, he is relieved from the liability of any damage which is done by it while so under the pilot's command. The rates of charge for pilotage are regulated partly by statute and usage, but also by the corporation of the Trinity House.—*Abbot on Shipping, by Shee*, 195; 7 *T. R.* 160; 2 *B. & Ad.* 380; 4 *M. & S.* 77; 3 *Price*, 302; 1 *Rob.* 45; 6 *Jur.* 157; *st.* 6 *Geo.* 4, *c.* 125; 2 *Geo.* 4, *c.* 87; 3 & 4 *Vict. c.* 68; *M'Culloch's Dict. Com.* 903; 3 *Steph. Bl.* 284.

PIN-MONEY.—An allowance set apart by a husband for the personal expenses of the wife; i. e. for the dress and pocket-money of the wife. It is that money which the husband allows the wife for the purpose of decking or attiring her person, or to pay her ordinary personal expenses. It is not a gift from the husband to the wife out and out; it is not to be considered like money set apart for the sole and separate use of the wife during coverture, excluding the *jus mariti*; but it is a sum set apart for a specific purpose, due to the wife in virtue of a particular arrangement, payable by the husband by force of that arrangement, and for that specific purpose.—*Howard* v. *Digby*, 8 *Bligh's Rep. N. S.* 246.

PIPE (*pipe*). A roll in the Exchequer so called; and the office where it was kept was termed the Pipe-office of the Court of Exchequer.—2 *Arch. Pract.* 983; *Cowel.*

PISCARY (*piscaria vel privilegium piscandi*). The right or privilege of fishing. Thus *free fishery*, which is a royal franchise, is the exclusive right of fishing in a public river. *Common of piscary* is the right of fishing in another man's water. *Several fishery* resembles free fishery, only that he who has a several fishery must also be (or at least derive his right from) the owner of the soil, which in a free fishery is not requisite.—2 *Bl.* 39, 40.

PIX JURY (from Lat. *Pyxis*, a box made of the box-tree *Pyxacantha*), used by the ancients for gallipots, and to hold the Host in Catholic churches). A jury consisting of the members of the corporation of the Goldsmiths of the city of London, assembled upon an inquisition of very ancient date, called the trial of the *pix*. The object of this inquisition is to ascertain whether the coin of the realm, manufactured at her Majesty's mint, is of the proper or legal standard. This investigation as to the standard of the coin is called *pixing* it, and hence the jury appointed for the purpose is called a *pix* jury. The investigation takes place, usually once a year, and the Lord High Chancellor presides, and points out to the jury the nature of their duties. They have to ascertain whether the coin produced is of the true standard, or "sterling" metal, of which, by st. 25 Edw. 3, c. 13, all the coin of the kingdom must be made. This standard has been frequently varied, but for some time has been thus settled: the pound

troy of gold, consisting of twenty-four carats (or twenty-fourth parts) fine, and two of alloy, is divided into forty-four guineas and a half of the present value of twenty-one shillings each; and the pound troy of silver, consisting of eleven ounces and two penny-weights pure, and eighteen pennyweights alloy, is divided into sixty-two shillings. See *Folkes on English Coins; Spelm. Glos.* 203; *Dufresne*, 3, 165; 2 *Stephen, Bl.* 540, *n.* (*e*).

PLACITA. Pleadings, &c. It signified generally the style or title of the pleadings in the nisi prius record; for the nisi prius record until lately consisted of four parts, viz. the first *placita*, the pleadings, &c., the second *placita* and the *jurata*. And this term *placita*, as applied to a record, signified nothing more than the heading or title thereto; and was so called, because the first word of this title was "*pleas.*"—*Boote's Suit at Law*, 249; 1 *Arch. Pract.* 396.

PLAINT (from the Fr. *plainte*, complaint). The instrument or process by which actions are commenced in the court baron or county court. It has been described as a private memorial tendered in open court to the judge, wherein the party injured sets forth his cause of action.—3 *Bl.* 273. In actions of replevin the ordinary mode of proceeding is by *plaint* in the county court. The following is the form of a plaint used in an action of replevin:—"The 8th day of October, A. D. 1845. Cornwall, to wit. Joseph Werry complains of John Tuckett, in a plea of taking the cattle, goods and chattels, to wit, one cow and two heifers, of the said Joseph Werry, and unjustly detaining the same against gages and pledges, &c. Pledges to prosecute. John Doe, Richard Roe."—*See Finch, lib.* 4, *c.* 21; 2 *Arch. Pr.* 828; *Tidd's Pr.*

PLAINTIFF IN ERROR. — Is he who brings the writ of error, and thus appeals from the decision of the court below, which has been adverse to his interests. The defendant in the original action is therefore frequently the *plaintiff in error*.—*Dobson* v. *Dobson, Ca. Temp. Hard.* 19. See tit. *Error*.

PLEA (*placitum*). Is used in various senses. In its usual acceptation it signifies the defendant's answer to the plaintiff's declaration; and when this answer sets forth at large or in detail the subject-matter of the defence, it is denominated a *special plea*, in contradistinction to those direct and concise answers to the declaration termed the *general issues*. The word is also frequently used to signify *suit* or *action*. Thus holding *pleas* means entertaining or taking cognizance of *actions* or *suits*; common *pleas* signify actions or suits between man and man, as distinguished from such as are promoted and prosecuted at the suit of the crown, and which are thence denominated *pleas of the crown*. The word is used in this sense by Finch in defining an issue:—"An issue is when both the parties join upon somewhat that they refer unto a trial, to make an end of the *plea*, i. e. suit or action. So the *plea* side of a court means that department of the court which takes cognizance of *civil actions*, as distinguished from *criminal* proceedings or matters which peculiarly concern the crown." See *Finch, Law*, 396, *c.* 35; *Step. Pl.* 52. Also tit. *Plea Side*.

PLEA SIDE. The *plea* side of a court means that branch or department of the court which entertains or takes cognizance of *civil actions* and suits as distinguished from its criminal or crown department. Thus the court of Queen's Bench is said to have a *plea* side, and a *crown* or *criminal* side; the one branch or de-

partment of it being devoted to the cognizance of civil actions, the other to criminal proceedings, and matters peculiarly concerning the crown. So the Court of Exchequer is said to have a *plea* side and a *crown* side; the one being appropriated to civil actions, the other to matters of revenue. For a further explanation see tit. *Plea*.

PLEAD. The defendant in an action is said to *plead* when he delivers his answer to the plaintiff's declaration; because his answer itself is called a plea.—*Stephen on Pleading*, 52.

PLEADING. See tit. *Pleadings*.

PLEADING ISSUABLY. Pleading such a plea as is calculated to raise a material issue either of law or fact. The defendant in an action is entitled, as a *matter of right*, to a certain number of days to plead. If he seeks to obtain further time, it is granted to him only by way of indulgence; and the court in so doing usually annexes to its order the condition that the defendant shall *plead issuably*, that is, that he shall plead a fair and *bonâ fide* plea, as distinguished from one which is calculated only to embarrass the defendant, and to retard the progress of the action. The condition so annexed is in effect "an agreement by the defendant to speed the cause to its conclusion, and bring it to an issue upon the substantial merits of law or fact, without regard to any formal inaccuracies in the plaintiff's statement."—*Per Coleridge in Barker* v. *Gleadon*, 5 *Dowl.* 136; *Staples* v. *Holdsworth*, 4 *Bing. N. C.* 146; *Wilkinson* v. *Page*, 1 *Dowl. & L.* 913. See also tit. *Issuable Plea*.

PLEADING OVER. Passing over, passing by, omitting to take notice of, &c. Thus, when a defendant in his pleadings passes by or takes no notice of a material allegation in the declaration, he is said to *plead over* it.

PLEADINGS. The mutual allegations or statements which are made by the plaintiff and defendant in a suit or action are so termed. These are now written and delivered between the contending parties, or to the proper officers appointed to receive them; but formerly they were actual *vivâ voce* pleadings in open court. The pleadings in an action are designated according to their nature by the following terms: *declaration, plea, rejoinder, surrejoinder, rebutter, and surrebutter*. The principles on which these pleadings or contending statements are framed, and the manner in which they govern or affect the subsequent course of the cause, form the principal feature in the art or science of pleading, or, as it is popularly called, special pleading. See *Read* v. *Brookman*, 3 *Term Rep.* 159, *per Buller*; *Boote's Suit at Law*, 213; *Step. Pl.* 24; 3 *Ch. Bl.* 293.

PLEAS. Pleas, in one sense, signify suits, and they are divided into two sorts; viz. *pleas of the crown*, which comprehend all crimes and misdemesnors, wherein the king (on behalf of the public) is the plaintiff; and *common pleas*, which include all civil actions depending between subject and subject.—3 *Bl.* 40. See also tit. *Plea*.

PLEDGES. In the ancient law no person could prosecute a civil action without having in the first stage of it two or more persons as pledges of prosecution; and if judgment was given against the plaintiff, or he deserted his suit, both he and his pledges were liable to amercement to the king *pro falso clamore*. In the course of time, however, these pledges were disused, and the names of *fictitious* persons substituted for them:

two ideal persons, *John Doe* and *Richard Roe* having become the common pledges of every suitor: now, however, even these are not used in personal actions.—*Boote's Suit at Law*, 77, *n.* 43.

PLEDGERY (*plegiagium*). Suretyship, the obligation of one who has become a pledge for any one.—*Cowel.*

PLEGIIS ACQUITANDIS. A writ that lay for a surety against him for whom he had become surety, if he had not paid the money at the appointed day.—*Les Termes de la Ley*; *Reg. Orig.* 158.

PLENARTY. Is applied to a benefice being full or occupied, and is directly opposed to *vacation*, which signifies a benefice being void.—*Stuunf. Prerog. c.* 8, 32.

PLENARY CAUSES. In the ecclesiastical court causes are divided into *plenary* and *summary*. Plenary causes are those in whose proceedings the order and solemnity of the law is required to be exactly observed, so that if there be the least departure from that order, or disregard of that solemnity, the whole proceedings are annulled. *Summary* causes are those in which it is unnecessary to pursue that order and solemnity. — *Conset*, 22; *Rog. Ecc. Law*, 652.

PLENE ADMINISTRAVIT. A plea pleaded by an executor or an administrator, on an action being brought against him, to the effect that he has *fully administered;* that is, that he has exhausted the assets before such action was brought.—*Toller's Exec.* 267.

PLIGHT. An old English word, which sometimes signifies the estate, with the habit and quality of the land, and extended to a rent charge, and to a possibility of dower.—*Cowel.*

PLOUGH-BOTE. An allowance of wood which tenants were entitled to, for repairing their implements of husbandry.—2 *Bl.* 35.

PLURIES. A writ of summons or capias is termed a *pluries* writ, when two other writs have been issued previously, but to no effect; and it is so termed, because the words run thus: "you are commanded *as often* you have been commanded," (alluding to the commands contained in the two previous writs).—*Smith's Action at Law*, 29; 3 *Bl.* 283.

POCKET SHERIFFS. Sheriffs appointed by the sole authority of the crown without the interposition of the judges.—1 *Bl.* 342.

POLICY OF ASSURANCE or INSURANCE. See tit. *Insurance.*

POLL. Deeds are sometimes called *deeds poll*, in contradistinction to deeds *indented* or *indentures;* deeds poll being shaved or polled quite even. See tit. *Deed Poll.*

POLLS, *Challenge to.* See tit. *Challenge.*

POLYGAMY (*polygamia*). The crime of having a *plurality* of wives or husbands living at the same time. 4 *Bl.* 163.

PONE. An original writ used for the purpose of removing suits from the court baron or county court into the superior courts of common law. It is also the proper writ to remove all suits which are before the sheriff by writ of *justicies.*—2 *Arch. Pract.* 831; 3 *Bl.* 34; *Les Termes de la Ley.*

PONE PER VADIOS. A writ used in the action of replevin, in default of the defendant's appearance, by which the sheriff is commanded to

summon the defendant to appear,&c. —2 *Arch. Pract.* 832.

PONENDUM IN BALLIUM. A writ formerly in use, commanding the defendant to be bailed in bailable cases.—*Cowel.*

PONENDUM SIGILLUM AD EXCEPTIONEM. A writ by which the king commanded the justices, according to the stat. of *Westm.* 2, to put their seals to exceptions exhibited by the defendant against the plaintiff's declarations, or against the evidence, verdict, or other proceedings before them.—*Cowel.*

PONE PER VADIUM. See tit. *Pone per Vadios.*

POPULAR ACTIONS. Such actions as are maintainable by any of her Majesty's subjects for recovery of the penalty incurred by transgressing some penal statute. It is called a *popular* action because it is a proceeding which may be taken not by any one person in particular, but by any of the people who think proper to prosecute it.—3 *Bl.* 161; *Cowel; tit. Action Popular.*

PORT (*portus maris*). A port is an haven, and somewhat more. 1st. It is a place for arriving and unlading of ships or vessels. 2nd. It hath a superinduction of a civil signature upon it, somewhat of franchise and privilege. 3rd. It hath a *ville*, or city or borough, that is, the *caput portus*, for the receipt of mariners and merchants, and the securing and vending of their goods, and victualling their ships. So that a port is *quid aggregatum*, consisting of somewhat that is natural, viz. an access of the sea, whereby ships may conveniently come; safe situation against winds, where they may safely lie, and a good shore where they may well unlade; something that is artificial, as keys and wharfs and cranes, and warehouses and houses of common receipt; and something that is civil, viz. privileges and franchises, viz. *jus applicandi, jus mercati*, and divers other additaments given to it by civil authority. A port of the sea includes more than the bare place where the ships unlade, and sometimes extends many miles; as the port of London in the time of King Edward I. extended to Greenwich; and Gravesend is also a member of the port of London: so the port of Newcastle takes in all the river from Sparhawk to the sea.—*Hale de Portibus Maris, pars. sec. c.* 2.

PORTIONER (*portionarius*). When a parsonage is served by two, or sometimes three ministers alternately, the ministers are termed *portioners*, because they receive but a *portion* or proportion of the tithes or profits of the living.—*Cowel.*

PORTMOTE or PORTMOOT (from *portus*, a port, and *gemote*, an assembly). A court kept in haven towns or ports.—*Les Termes de la Ley.*

PORT-REVE (from *port*, an haven or harbour, and *reve*, an officer, minister or bailiff, who does business for another man). The port-reve was the king's bailiff, who looked after the customs and tolls in the port of London, before they were let to fee-farm.—*Brady on Bor.* 16, *fo. ed.* This office, it is believed, is not *peculiar* to the port of London.

POSSE. This word is used in law to signify a *possibility*, or that which may be possible, in contradistinction to that which actually is in existence, and which is said to be in *esse*.—*Cowel.*

POSSE COMITATUS. The *posse comitatus* or *power of the county* was the power given to the sheriff and

other of the king's officers by act of parliament to compel the attendance of the inhabitants of the county (with some exceptions), to assist him in preserving the peace, in pursuing and arresting offenders, and in such like acts where assistance was requisite.—*Lambard's Eirenarcha*, 11, *et seq.*

POSSESSIO FRATRIS. Possession or seisin of the brother. It is a maxim, that *possessio fratris facit sororem esse hæredum*, that is, that the possession or seisin of a brother will make his sister of the whole blood his heir in preference to a brother of the half blood.—2 *Bl.* 228.

POSSESSION. See tit. *Seisin.*

POSSESSION MONEY. The man whom the sheriff puts in possession of goods taken under a writ of *fieri facias* is entitled, whilst he continues so in possession, to a certain sum of money *per diem*, which is thence termed possession money. The amount is 3*s.* 6*d.* per day, if he is boarded, or 5*s.* per day, if not boarded. See *Atk. Sheriff Law*, 386; *Gaskell* v. *Sefton*, 14 *Law Journ. N. S.* 107, *Exch.*

POSSESSORY ACTION. An action which has for its object the regaining possession of the freehold, of which the demandant or his ancestors have been unjustly deprived by the present tenant or possessor thereof.—3 *Bl.* 180.

POSSIBILITY. An uncertain thing which may or may not happen; such, for instance, as the chance of an heir apparent succeeding to an estate, or of a relation obtaining a legacy on the death of his kinsman. A possibility is said to be either *near* or *remote*; as, for instance, when an estate is limited to one after the death of another, this is a near possibility; but that a man shall be married to a woman, and then that she shall die, and he be married to another, this is a remote possibility. —7 *Parken and Stewart's Bythewood*, 327.

POST, *Writ of Entry in the.* See tit. *Entry, Writ of.*

POST DIEM. The return of a writ *after the day* assigned for its return, for which the *custos brevium* had a fee of fourpence.—*Les Termes de la Ley.*

POST DISSEISIN. A writ that lay for him, who having recovered lands or tenements by *præcipe quod reddat*, upon default or reddition, was again disseised by the former disseisor.—*F. N. B.* 190; *Cowel.*

POSTEA. The verdict given by the jury on the trial of a cause, drawn up in due form, and entered on the back of the nisi prius record. It is called the *postea*, from the word with which, at a former period (when the proceedings were in Latin), it commenced. It now begins with the word "*afterwards.*" The *postea* may be said to contain the substance of what was done at the trial.—*Stephen on Pleading*, 96; *Boote's Suit at Law*, 274.

POSTERIORITY (*posterioritas*). The coming after or being behind. It is a word of comparison and relation in tenure, the correlative of which is the word *priority*. Thus, a man who held lands or tenements of two lords was said to hold of his more ancient lord by *priority*, and of his less ancient lord by *posteriority*.—*Old Nat. Brev.* 94.

POST-FINE. See tit. *King's Silver.*

POST-MAN. See tit. *Pre-Audience.*

POST-NATUS. In our old law

writers signifies the second son.—*Cowel.*

POST-NUPTIAL. After marriage. Thus an agreement entered into by a father *after the marriage* of his daughter by which he engages to make a provision for her, would be termed a *post-nuptial* agreement.—See *Ellis* v. *Nimmo, Lloyd and Goold, Rep. Temp. Sugd.* 333.

POST OBIT BOND. A post obit bond is an agreement on the receipt of money by the obligor to pay a larger sum exceeding the legal rate of interest upon the death of the person from whom he, the obligor, has some expectations if he survive him. —*Chesterfield* v. *Jameson*, 2 *Ves.* 157; 1 *Atk. Rep.* 352; *Fox* v. *Wright*, 6 *Madd. Rep.* 111; *Story's Eq. Jur.* 344, 345.

POST-TERMINUM. The return of a writ not only after the day assigned for its return, but also *after the term*, for which the *custos brevium* took the fee of 20*d.* It was sometimes taken for the fee itself.—*Cowel.*

POSTULATION (*postulatio*). A petition. Formerly, on the occasion of a bishop being translated from one bishopric to another, he was not *elected* to the new see, for the rule of the canon law is *electus non potest elegi*; and the pretence was, that he was married to the first church, which marriage could not be dissolved but by the pope; and thereupon he was *petitioned*, and consenting to the *petition*, the bishop was translated, and this was said to be by *postulation*; but this was restrained by 16 *R.* 2, *c.* 5.—*Cowel*; *Tomlins.*

POUND. See tit. *Impound.*

POUND BREACH. Is the act of breaking into a *pound* or inclosure in which things distrained are placed under the protection of law; and it is an offence in the eye of the law, even where the distress has been taken without just cause; for when once impounded, the goods immediately are in legal custody. The punishment for such offence varies according to the nature of the thing distreined, but in case of distress *damage feasant*, it is, by 6 & 7 Vict. c. 30, fixed at a penalty not exceeding 5*l.* and the payment of all expenses. —*Co. Litt.* 47; 11 *East*, 405, *n.* (*a*); 3 *Stephen's Bl.* 369.

POUNDAGE, *Sheriff's.* Is an allowance to the sheriff of so much in the pound upon the amount levied under an execution. The object of this allowance is to remunerate the sheriff for the risk and trouble which are incident to the performance of this branch of his duties. Originally, or at common law, the sheriff was entitled to no allowance for executing writs, his office being regarded solely as an honorary one, and hence it was that men of wealth and substance were usually elected to fill this post. In the progress of society, however, and on the growth of commerce, the duties of a sheriff being attended with considerable expense and the office thereby becoming extremely onerous, the legislature has, by different acts of parliament, entitled them to certain fees and dues, amongst which the above is included.—*Dalton's Office of Sheriff*; *Impey's Sheriff.*

POURPARTY (*propartia*). To make *pourparty* is to divide and sever the lands that fall to parceners, which before partition they held jointly. It is the opposite to *pro indiviso.*—*Old Nat Brev.* 11; *Cowel.*

POURPRESTURE (from the Fr. *pourpris*, an enclosure). The wrongful inclosing another man's property, or the encroaching or taking to one's self that which ought to be in com-

mon. It is perhaps more commonly applied to an encroachment upon the property of the crown, either upon its demesne lands, or in the highways, rivers, harbours, or streets.—2 *Co. Inst.* 38, 271.

POUR SEISIR TERRE LA FEMME QUE TIENT IN DOWER. A writ by which the king seized upon the land, which the wife of his deceased tenant who held *in capite* had for her dowry, if she married without his leave.—*Cowel.*

POURVEYANCE. See tit. *Preemption.*

POURVEYOR. See tit. *Preemption.*

POWER. A power is an authority which one person gives to another, authorizing him to act for him, and in his stead. Powers by the common law were divided into two sorts, *naked* powers or bare authorities, and powers coupled with an interest. Thus, when a man devises that his executors shall sell his land, this power is a *naked* one, that is, the power which the testator so gives to his executors to sell his land, is *simply* a power, and does not vest any interest in the land in the executors; whereas, if a man devises lands *to* his executors, to be sold, this is a power coupled with an interest. The word *power* retains the same meaning when coupled with other words; thus, a *power of attorney*, or letter of attorney, signifies an authority which one man gives to another to act for him; and these powers are perhaps of the most frequent occurrence, being resorted to whenever circumstances are likely to occur to prevent a party doing the act desired to be done himself: as, for instance, if it were necessary that a person should sign a deed next week, but which he could not do, being obliged to set out upon a voyage to a foreign country before that time, in this case he might authorize some other person to do it for him, and the instrument by which he would confer that authority would be a *power of attorney.*—4 *Cruise*, 145.

POWER OF APPOINTMENT. See tit. *Appointment.*

POWER OF ATTORNEY. See tit. *Power.*

POWER OF THE COUNTY. See tit. *Posse Comitatus.*

POYNINGS' LAW. An act of parliament made in Ireland in the reign of Hen. 7, by which it was enacted, that all statutes made in England before that time should be in force in Ireland. It was so called because Sir Edw. Poynings was first lieutenant there at the time it was made. —*Co.* 12 *Rep.* 190.

PRACTICE COURT, *Queen's Bench.* Is a court attached to the Court of Queen's Bench and presided over by one of the judges of that court, in which points of *practice* and pleading are discussed and decided. "After the appointment of an additional judge to the Court of King's Bench, under the authority of 11 Geo. 4 & 1 Will. 4, c. 70, s. 1, which took place in Michaelmas Term, 1830, Lord Tenterden, then Lord Chief Justice, informed the bar that in addition to the powers already exercised by one judge sitting apart from the others in the *Bail Court* (or court in which the sufficiency of parties as bail is ascertained), all matters of *practice* would for the future be determined by him. Since then, it has become usual to move in this court, in certain cases, for new trials; and in ordinary cases, for writs of mandamus and of prohibition, in addition to mere points of practice. If any doubt arise in

the mind of the presiding judge as to any question brought before him, he refers the party to the full court, before which indeed cause, on rules *nisi*, is generally shown; but the decision of the single judge is of itself conclusive." The four *puisne* judges by turns preside here for the space of a term. This court, though frequently and properly termed the "*Practice Court* of the Queen's Bench," is now generally called, from its origin, the *Bail* Court.—*Preface to Dowling's Reports of Cases in the King's Bench Practice Court, vol.* 1.

PRAYER OF PROCESS. A prayer or petition with which a bill in equity concludes, to the effect that a writ of subpœna may issue against the defendant to compel him to answer upon oath all the matters charged against him in the bill.—See also the Outline of a Suit in Equity at the end of the volume.

PRÆCIPE. An original writ in the alternative, commanding the defendant to do the thing required, or to show the reason for not doing it. This writ was used when something certain was demanded by the plaintiff, which it was incumbent on the defendant himself to perform; as to restore the possession of land, to pay a certain liquidated debt, to perform a specific covenant, and the like. The word *præcipe* is now commonly used for a sort of abstract of a writ of summons or capias which is made out on a slip of paper, and delivered to the signer of the writs at the time of issuing them; and from which abstract or memorandum that officer makes his entry in the book kept for that purpose. — 3 *Bl.* 274; *Arch. Pract.* 656.

PRÆCIPE IN CAPITE. When one of the king's immediate tenants *in capite* was deforced, his writ of right was called a writ of *præcipe in capite*, —3 *Bl.* 194.

PRÆCIPE QUOD REDDAT. A writ of great diversity, extending as well to writs of right as to writs of entry. It was sometimes called a *writ* of right *close*, when issuing out of Chancery *close;* sometimes a *writ of right patent*, when issuing out of Chancery *patent* or open.—*Fitz. Nat. Brev. c.* 1.

PRÆCIPE, *Tenant to the.* See tit. *Tenant to the Præcipe*, and also tit. *Fine.*

PRÆDIAL TITHES. See tit. *Tithes.*

PRÆFINE. See tit. *Primer Fine.*

PRÆMUNIRE (from *præmoneo*, to forewarn, &c.) A species of offence affecting the king and his government, though not subject to capital punishment. When any one is said to incur a *præmunire*, it signifies that he incurs the penalty of being out of the king's protection, and of having his property forfeited to the king. It is so called, from the words of the writ preparatory to the prosecution thereof, viz. "*præmunire facias*," &c. This writ is itself frequently called a *præmunire.*—3 *Inst.* 110; 4 *Bl.* 103.

PREAMBLE OF A STATUTE. The introductory clause or section of a statute is so termed. It usually recites the objects and intentions of the legislature in passing the statute, and frequently points out the evils or grievances which it was the object of the legislature to remedy. Although the preamble is generally a key to the construction, yet it does not always open or disclose all the parts of it; as sometimes the legislature, having a particular mischief in view, which was the primary object of the statute, merely state this in the preamble, and then go on in

the body of the act to provide a remedy for general mischiefs of the same kind, but of different species, neither expressed in the preamble, nor perhaps then contemplated by the framer thereof.—*Mann* v. *Cammel*, *Lofft*, 783; see also *Comp.* 543; 4 *Term R.* 793.

PRE-AUDIENCE. The precedence of being heard, which prevails at the bar according to the rank which the counsel respectively hold. In the Court of Exchequer there are two barristers appointed by the Lord Chief Baron, called the *post-man* and the *tub-man* (from the places in which they sit), who take precedence in motions.—3 *Bl.* 28.

PREBEND (*præbenda*). The rents and profits belonging to a cathedral church, or the endowment in land or money given to it for the maintenance of the dean, chapter, and spiritual officers connected therewith. A *prebendary*, vulgarly called a *prebend*, is one of this ecclesiastical body who are so maintained.—*Cowel.*

PREBENDARY (*prebendarius*). See tit. *Prebend.*

PRECEDENT CONDITIONS. See tit. *Condition.*

PRECE PARTIUM. When a suit is continued by the prayer, assent, or agreement of both parties.—*Cowel.*

PRE-CONTRACT. A contract which had been made previously to another contract.—3 *Bl.* 434, 435.

PRE-EMPTION (*præ emptio*). The prerogative of purveyance or pre-emption was a right enjoyed by the crown of buying up provisions and other necessaries by the intervention of the king's purveyors for the use of his royal household, at an appraised valuation, in preference to all others, and even without consent of the owner; and also of forcibly impressing the carriages and horses of the subject to do the king's business on the public roads, in the conveyance of timber, baggage, and the like.—1 *Bl.* 287.

PREFER, *To.* To bring before, to prosecute, to try, to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment.—2 *East*, 413; 13 *Geo.* 3, *c.* 84, *s.* 33; 5 & 6 *Will.* 4, *c.* 50, *s.* 98; 6 *Jur.* 1037.

PREGNANCY, *Plea of.* A plea which a woman capitally convicted may plead in stay of execution; for this, though it is no stay of judgment, yet operates as respite of execution until she is delivered.—4 *Bl.* 394.

PREMIER SERGEANT. See tit. *Primier Serjeant.*

PREMISES. Matter previously stated or set forth is frequently so termed. In a deed the *premises* comprise all that portion which precedes the *habendum*, i. e. the date, the parties' names and descriptions, the recitals, the consideration and the receipt thereof, the grant, the description of the things granted, and the exceptions.—4 *Cr. Dig.* 26. So in pleading, the word is used, in its logical sense, as signifying foregoing statements or previously mentioned facts. Thus, in a declaration in indebitatus assumpsit, the plaintiff, after alleging that the defendant was indebted to him in a given sum of money, proceeds to state that in consideration of the *premises* the defendant promised to pay him the same. So again, in a declaration for the diversion of water from a water-course, the plaintiff, after stating his right to the enjoyment of the water, and his previous user of the same, and setting forth the fact and the

nature of the diversion, then proceeds to point out the injurious consequences which have flowed from the previously stated facts, in the following manner: "and the plaintiff by reason of the *premises* hath been deprived of the use, benefit and advantage of the water of the said watercourse," &c.

PREMIUM. Amongst merchants, signifies that sum of money which the insured gives to the insurer.—*Cowel.*

PRENDER (from the Fr. *prendre*, to take). The right or power of taking a thing before it is offered.—*Co. Rep.* 1; *Les Termes de la Ley.*

PRENDER DE BARON. Literally signifies to take a husband; but it was commonly applied as an exception, to disable a woman from pursuing an appeal of murder against the killer of her former husband.—*Staundf. Pl. Cor. lib.* 3, c. 19.

PREPENSE. See tit. *Malice Prepense.*

PREROGATIVE (from *præ*, before or above, and *rogo*, to ask or demand). By prerogative is meant some exclusive or pre-eminent power or right. Thus the king's prerogative is usually understood to be that special pre-eminence which the king has over and above all other persons, and out of the ordinary course of the common law, in right of his regal dignity. Thus the power of making war and peace; of making treaties, leagues, and alliances with foreign states and princes; of appointing ports and havens, or such places only for persons and merchandize to pass into and out of the realm as he in his wisdom sees proper, are all instances of the king's prerogative. —1 *Bl.* 239, 267.

PREROGATIVE COURT. See tit. *Courts Ecclesiastical, sec. 5.*

PREROGATIVE LAW. That part of the common law of England which is more particularly applicable to the affairs of the king.—*Com. Dig.* tit. *Ley (A).*

PRESCRIBE, *To.* To assert a right or title to the enjoyment of a thing on the ground of having hitherto had the uninterrupted and immemorial enjoyment of it.—See tit. *Prescription*; 1 *Wms. Saund.* 340, *n.* (2).

PRESCRIPTION (*præscriptio*). A title which a person acquires to lands, &c. by long and continued possession. Every species of prescription by which property is acquired or lost is founded on this presumption, that he who has had a quiet and uninterrupted possession of any thing for a long period of years is supposed to have a just right, without which he could not have been suffered to continue in the enjoyment of it. This mode of acquisition was well known in the Roman law by the name of *usucaptio*, because a person who acquired a title in this manner might be said *usu rem capere.* Before the act of 2 & 3 Will. 4, c. 71, the possession required to consitute a *prescription* must have existed time out of mind, or beyond the memory of man, as it is also termed, that is, before the reign of Richard the First; but now, the period of possession necessary to constitute a title by prescription is in many cases by the above act considerably shortened.—3 *Cruise*, 479; 2 *Bl.* 263; *Hayes' Conv.* 202, 575; *Mackeldy's Mod. Civ. Law by Kauffman.*

PRESENT, *To.* See tit. *Presentment.*

PRESENTATION (*presentatio*).

The act of a patron or proprietor of a living, offering or presenting a clerk to the ordinary. This is done by a kind of letter from the patron to the bishop of the diocese in which the benefice is situated, requesting him to admit to the church the person presented.—3 *Cruise*, 14; See also tit. *Nomination*.

PRESENTATIVE ADVOWSON. See tit. *Advowson*.

PRESENTEE. He who is presented to a living by the patron thereof.—*Cowel*.

PRESENTLY. Immediately, now, at this present time. Ex. gr. "All moveable goods, though in ever so many different and distant places from the executor, vest in the executor in possession *presently* upon the testator's death," i. e. *immediately* upon his death.—See 1 *Wms. Exors.* 495.

PRESENTMENT. This word has various significations. In its relation to criminal matters it signifies the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the king; as the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment before the party presented can be put to answer it. The word, as used in reference to admissions to copyholds, signifies an information made by the homage or jury of a court baron to the lord, by way of instruction, to give the lord notice of the surrender and of what has been transacted out of court.—4 *Bl.* 301; 5 *Cruise*, 502.

PRESUMPTION (*presumptio*). That which is presumed or believed in the absence of any direct evidence to the contrary. A presumption, or that which is presumed, has been denominated a *violent*, a *probable*, or a *light* presumption, according to the amount of evidence in support of a presumption. Thus, if a landlord sues for rent due at Michaelmas, 1754, and the tenant cannot prove the payment, but produces an acquittance for rent due at a subsequent time, in full of all demands, this is a *violent* or strong presumption of his having paid the former rent, and is equivalent to full proof. Again, if in a suit for rent due in 1754, the tenant proves the payment of his rent due in 1755, this is a *probable* presumption that the rent of 1754 was paid also. Again, such presumptions as are drawn from inadequate grounds are termed *light* or rash presumptions.—3 *Bl.* 371.

PRESUMPTIVE HEIR. See tit. *Heir*.

PRETENSED RIGHT or TITLE (*jus prætensium*). The right or title of him, who being out of the possession of lands or tenements claims them, and sues for them.—*Cowel*.

PREVIOUS QUESTION. See tit. *Avoidance of Decision*.

PRICKING FOR SHERIFFS. Is the method of electing the sheriffs of the different counties of England now adopted. Originally the sheriffs were chosen by the people in their *folkmots* or county court; but these popular elections, growing tumultuous, they were put an end to by 9 Edw. 2, st. 2, and it was enacted that the sheriffs should be assigned by the Chancellor, Treasurer, Barons of the Exchequer, and by the Justices, and in the absence of the Chancellor, by the others, without him; and since the time of Henry 6, it has been the custom for these, or some of these distinguished and learned persons, to meet in the Exchequer Chamber on the morrow of All Souls yearly (which day is now al-

tered to the morrow of St. Martin by the last act for abbreviating Michaelmas term (24 Geo. 2, c. 48, s. 12), and then and there to propose three persons to the king (or queen), who afterwards appoints one of them to be the sheriff, and this is done by marking each name with the *prick* of a pin, and for that reason this particular election is generally termed *pricking for sheriffs*.—*Christian's note to* 1 *Bl. Com.* 341, 15*th ed.*; *Impey's Sheriff*, 9; 3 *Stephen's Bl.* 23.

PRIMAGE. A small payment made to the master of a vessel for his personal care and trouble, which he is to receive, in addition to his wages or salary, to his own use, unless he has otherwise agreed with his owners. This payment appears to be of very ancient date; and, in the old books, is sometimes called "hat-money," and also "*la contribution des chausses ou pot de vin du maitre.*"—*Abbot on Shipping by Shee*, 404; *Best* v. *Saunders*, 1 *M. & M.* 208; *Charleton* v. *Colesworth*, 1 *R. & M.* 175; *Scott* v. *Miller*, 5 *Scott*, 15.

PRIMATE OF ALL ENGLAND. An ecclesiastical title belonging to the Archbishop of Canterbury, who is styled "Primate of *all* England and Metropolitan." Anciently, indeed, he had *primary* jurisdiction, not only over all England, but in Ireland too; and it was from him that the Irish bishops received consecration; for Ireland had no other archbishop till the year 1152, and the Archbishop of Canterbury was then denominated "Orbis Britannici Pontifex." But for a long period, up to a recent date, Ireland had four archbishops, one for each of the four provinces of Armagh, Dublin, Cashel and Tuam, all of whom were distinguished by the title of *Primate*; but by the recent statutes of 3 & 4 Will. 4, c. 37, and 4 & 5 Will. 4, c. 90, the number was diminished to two, the two latter being reduced to the rank of bishops. The Archbishop of York is styled *Primate* of England.—*Roger's Ecc. Law*, 106; 1 *Burn's Ecc. Law by Phillimore*, 194, 415 *kk*, 415 *qq*.

PRIMER FINE. On the levying of a fine when the writ of covenant was sued out, there was due to the king by ancient prerogative a sum of money called a *primer fine*, being a noble for every five marks of land sued for. It was so called, because there was another fine payable afterwards, which was termed the *post* fine.—2 *Bl.* 350; see also tit. *Fine*.

PRIMER SEISIN (*prima seisina*). During the feudal tenures, when any of the king's tenants *in capite* died seised of lands or tenements, the crown was entitled to receive of the heir, if he were of full age, a sum of money amounting to one whole year's profits of the lands, which was termed *primer seisin*, i. e. first possession.—1 *Cruise*, 31; 2 *Bl.* 66; 2 *Inst.* 134.

PRIMIER SERJEANT. The king's first serjeant-at-law, so constituted by special patent.—3 *Chitty's Bl.* 28.

PRIMOGENITURE (*primogenitura*). The right of the eldest son to inherit his ancestor's estates to the exclusion of the younger sons: or, as the canon of descent has it, "that where there are two or more males, in equal degree, the eldest only shall inherit." *Litt. sec.* 5; 2 *Bl.* 214.

PRINCIPAL (*principalium*). An heir-loom, or mortuary or corse-present. As in Urchenfield, in the county of Hereford, the best beast, the best bed, or the best table, which passed to the eldest child, and was not liable to partition, was so termed. —*Cowel*. See also the next title.

PRINCIPAL AND ACCESSORY. A criminal offender is either a *principal*

or an *accessory*: a principal is either the actor or the actual perpetrator of the crime; or else is present, aiding and abetting the fact to be done: an accessory is he who is not the chief actor in the offence, nor present at its performance, but is someway concerned therein, either *before* or *after* the fact committed. An accessory *before* the fact is he who, being absent at the time of the commission of a felony, procures, counsels or commands the principal felon to commit it; as if several plan a theft, which one is to execute; or if a person incites a servant to embezzle the goods of his master. An accessory *after* the fact is one who, knowing a felony to have been committed, receives, harbours, relieves, comforts, or assists the principal or accessory before the fact with a view to his escape.—1 *Hale*, 613, 618; *Dickenson's Q. S. n.* 70. See also 3 *Car. & P.* 390; *Rex* v. *Hawkins, ib. p.* 392; *and Reg.* v. *Howell*, 9 *Car. & P.* 447, *per Littledale, J.*

PRINCIPAL CHALLENGE. A challenge to a juror is called a *principal* challenge when the cause assigned for the challenge carries with it *primâ facie* evident marks of suspicion, either of malice or favour; as that a juror has an interest in the cause, that he has taken money for his verdict and the like.—3 *Bl.* 363. See also tit. *Challenge.*

PRIORITY (*prioritas*). See tit. *Posteriority.*

PRISONER (*prisonarius*). A man may be said to be a prisoner upon *matter of record*, or upon *matter of fact.* Prisoner upon matter of record is he who, being present in court, is by the court committed to prison: a prisoner on matter of fact is he who is committed only upon arrest by the sheriff, &c.—*Staundf. Pl. Cor. lib.* 1, *c.* 32, 34, 35.

PRIVATE ACT OF PARLIAMENT. Is an act affecting particular persons, as distinguished from a public act, which concerns the whole nation. The statutes of the realm are generally divided into *public* and *private.* The former being an universal rule that regards the community at large, and of which the courts of law are bound of themselves judicially to take notice; the latter being rather exceptions than rules, operating only upon particular persons and private concerns, and of these the judges need only take notice when expressly pleaded. Thus, the statute 13 Eliz. c. 10, which prevents the master and fellows of any college, the dean and chapter of a cathedral, or any other person having a spiritual living, from making leases for longer terms than twenty-one years or three lives, is a *public act*, it being a rule prescribed to spiritual persons in general; but an act to enable the Bishop of Chester to make a lease to A. B. for sixty years, which is otherwise beyond a bishop's power, concerns only the parties, and is therefore a *private* act. 4 *Rep.* 13 *a*; *ibid.* 76 *a*; 1 *T. R.* 125; 2 *T. R.* 569; 1 *Stephen, Bl.* 67. See also tit. *Private Bills.*

PRIVATE BILLS. All parliamentary bills which have for their object some particular or private interest are so termed, as distinguished from such as the legislature itself originates for the benefit of the whole community, and which are thence termed *public bills.* The mode in which parliament proceeds in the passing of public and private bills well illustrates their distinctive characters. In passing public bills, parliament acts strictly in its legislative capacity; it originates the measures which appear for the public good; it conducts inquiries when necessary, for its own information, and enacts laws according to its own wisdom and judgment. The forms in which its deliberations

are conducted are established for its own convenience; and all its proceedings are independent of individual parties, who may petition indeed, and are sometimes heard by counsel; but who have no direct participation in the conduct of the business, nor immediate influence upon the judgment of parliament. In passing private bills, the parliament still exercises its legislative functions, but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted appear as suitors; while those who apprehend injury are admitted as adverse parties in the suit. All the formalities of a court of justice are maintained; various conditions are required to be observed, and their observance to be strictly proved; and if the parties do not sustain the bill in its progress by following every regulation and form prescribed, it is not forwarded by the house in which it is pending; and if they abandon it, and no other parties undertake its support, the bill is lost, however sensible the house may be of its value. The analogy which all these circumstances bear to the proceedings of a court of justice is further supported by the payment of fees, which is required of every party supporting or opposing a private bill, or desiring or opposing any particular provision. —*May's Tr. on Parl.* 384, 385.

PRIVATE CHAPELS. See tit. *Proprietary Chapels.*

PRIVATE WAY. See tit. *Way.*

PRIVATION (*privatio*). A word commonly applied to a bishop or rector, when by death or other circumstance he is deprived of his bishopric or benefice. It signifies much the same as *deprivation.*— *Cowel.*

PRIVEMENT ENSIENT. Signifies a woman being with child, but not quick with child.—*Wood's Inst.* 662.

PRIVIES (from the Fr. *privé*, familiar, intimate, &c.) Persons between whom some connection exists, arising from some mutual contract entered into with each other; as between donor and donee, lessor and lessee; or else it signifies persons related by blood, as ancestor and heir, &c. And this connection which so arises or exists between persons is termed *privity.* This word *privy* is used with various adjuncts, in order to express the *nature* of the *privity* or connection which exists between persons. Thus persons related by blood, as ancestor and heir for instance, are denominated *privies in blood*; those related to a party by mere right of representation, as executors or administrators of a deceased person, are denominated *privies in representation* or *in right*, those connected with each other in respect of estate, as lessors and lessees, donors and donees, &c., are denominated *privies in estate.* So also those who are in any way related to the parties who levy a fine and claim under them either by right of blood or otherwise, are denominated *privies to a fine*; and the connection or relationship which in all such cases arises or exists between the parties is termed *privity*; so that between lessors and lessees, who are termed privies in estate, there also exists *privity of estate.*—*5 Cruise*, 158; *2 Bl.* 355; *Les Termes de la Ley.*

PRIVILEGE (*privilegium*). Sometimes used in law for a place which has some special immunity; and sometimes for an exemption from the rigour of the common law. It is either *real* or *personal.* A real privilege is that which is granted to a *place*, a personal privilege that which is granted to a person. An instance of the former kind is the power granted to the universities to have courts

of their own; an instance of the latter kind is the exemption of certain persons from being obliged to serve in certain offices, or to perform certain duties.—*Kitchin; Cowel.*

PRIVILEGED DEBTS. Those debts which an executor may pay in preference to others; such as the funeral expenses, servants' wages, expenses of medical attendance incurred during the illness of the deceased, &c.—*Tomlins.*

PRIVITY. See tit. *Privies.*

PRIVITY OF CONTRACT. That connection or relationship which exists between two or more contracting parties is so termed. See tit. *Privies.*

PRIVY (from the Fr. *privé*, familiar, &c.) Cowel defines *privy* to be he who is a partaker, or has an interest in any action or thing. But see tit. *Privies.*

PRIVY COUNCIL (*privatum consilium*). An assembly comprised of the king and such high and influential persons as he chooses to nominate, for consulting in state affairs, and for advising the king in general on matters connected with the public weal. —1 *Bl.* 230. See next title.

PRIVY COUNCIL, JUDICIAL COMMITTEE OF. Is a committee of privy councillors (or of members of the privy council), to whom by stat. 3 & 4 Will. 4, c. 41, the judicial authority of the privy council has been consigned, and by whom it is practically exercised. This committee consists of the Lord President, the Lord Chancellor, and such of the members of the privy council as shall from time to time hold the offices of the Lord Chief Justice of the Queen's Bench, Master of the Rolls, Vice-Chancellor of England, Chief Justice of the Common Pleas, Chief Baron of the Exchequer, Judge of the Prerogative Court, Judge of the Admiralty Court, and Chief Judge of the Court of Bankruptcy, or shall at any preceding time have held any of such offices. And any two other persons, being members of the council, may be appointed. All appeals in colonial and ecclesiastical causes, and from the Admiralty Court here and the Vice-Admiralty Courts abroad, or any which by law could be brought before the king (or queen) in council are to be referred to the judicial committee. No matter can be heard, unless in the presence of four members, and a majority of those present must concur in the judgment. By the recent stats. 6 & 7 Vict. c. 38, and 7 & 8 Vict. c. 69, the judicial committee has power of extending the term for which a *patent* right has been granted.—See 1 *Tyr. & Gran.* 222; 1 *Ves. sen.* 444; 7 *Ad. & El.* 713; 2 *Stephen's Bl.* 482; 3 *ib.* 426.

PRIVY SEAL (*privatum sigillum*). A seal in the custody of the principal secretary of state, and is used for such grants or letters patent, &c. as are ultimately to pass the great seal.—2 *Inst. 555*; 9 *Rep.* 18.

PRIVY VERDICT. See tit. *Verdict.*

PROBATE (*probatio*). The copy of a will or testament made out in parchment under the seal of the ordinary, and usually delivered to the executor or administrator of the deceased, together with a certificate of its having been proved, is commonly called the *probate*. It is sometimes used for the *act* of *proving* a will. The meaning of *proving* a will may be thus explained. An executor, before he is permitted to take a *probate* of the will, is obliged to swear before the ordinary, or his surrogate, that the writing contains the true last will and testament of the deceased as far as

he knows or believes, and that he will truly perform the same by paying first the testator's debts, and then the legacies therein contained, as far as the goods, chattels and credits will thereto extend, and the law charge him; and that he will make a true and perfect inventory of all the goods, chattels and credits, and exhibit the same into the registry of the spiritual court at the time assigned by the court, and render a just account thereof when lawfully required; and this is termed *proving* a will.—*Toller's Exe.* 58. See also tit. *Proving a Will.*

PROBATORY TERM. See tit. *Term Probatory.*

PROCEDENDO. A writ by which a cause which has been removed from an inferior to a superior court by *certiorari*, or otherwise, is sent down again to the same court *to be proceeded* in there, after it having appeared that the defendant had not good cause for removing it.—*Cowel; Les Termes de la Ley.*

PROCEDENDO AD JUDICIUM. A writ issuing from a superior court to one of subordinate jurisdiction, commanding the judge or judges thereof, in the king's name, to proceed to judgment on their having previously refused or neglected to do so.—3 *Bl.* 109.

PROCESS. This word is generally defined to be the means of compelling the defendant in an action to appear in court. And when actions were commenced by *original* writ, instead of by writ of summons as at present, the method of compelling the defendant to appear was by what was termed *original process*, being founded on the original writ, and so called also to distinguish it from *mesne* or intermediate process, which was some writ or process which issued during the pending of the suit. The word *process*, however, as now commonly understood, signifies those formal instruments called *writs*. The words *process* and *mesne process* are in common law practice frequently applied to the *writ of summons*, which is the instrument now in use for commencing personal actions. The word *process*, however, in its more comprehensive signification, includes not only the writ of summons, but all other writs which may be issued during the progress of an action. It may be observed that the words *mesne process*, as applied to the writ of summons, is now inaccurate phraseology, although very common, because the writ of summons is not now *mesne* or *intermediate* process, but is that process by which actions are *commenced*. Those writs which are used to carry the judgment of the courts into effect, and which are termed writs of execution, are also commonly denominated *final process*, because they usually issue at the *end* of a suit.—*Steph. on Plead.* 21; 3 *Bl.* 279; *Smith's Action at Law*, 23; 1 *Arch. Prac.* 2.

PROCESSUM CONTINUANDO. A writ for the *continuance of process* after the death of the chief justice, or other justices in the commission of oyer and terminer.—*Cowel.*

PROCHEIN AMY (*next friend*). As an infant cannot legally sue in his own name, the suit or action must be brought by a guardian *ad litem*, or, what amounts to the same thing, by his *prochein amy*, i. e. some friend who is willing to take upon himself the trouble and responsibility.—*Co. Lit.* 135 *b, note; Cro. Car.* 161; 2 *Step. Bl.* 333.

PROCHEIN AVOIDANCE (*next avoidance*). The power to present a clerk to a benefice when it shall next become void.—*Tomlins.*

PROCLAMATION (*proclamatio*). A notice publicly made of any thing;

or a public declaration of the king's will made to his subjects.

PROCLAMATION OF COURTS. Applied more particularly to the beginning or calling of a court together, and to the discharge and adjourning thereof.

PROCLAMATION OF A FINE. The notice or proclamation which was made after the engrossment of a fine, and consisted in its being openly read in court sixteen times; viz. four times in the term in which it was made, and four times in each of the three succeeding terms; which however was afterwards reduced to one in each term.—2 *Bl.* 352.

PROCLAMATION OF NUISANCES. A notice of proclamation for the removal of nuisances.—12 *Rich.* 2, *c.* 13.

PROCLAMATION OF REBELLION. See tit. *Commission of Rebellion.*

PROCLAMATION OF RECUSANTS. A proclamation which was formerly made for the conviction of recusants on non-appearance at the assizes.—29 *Eliz. c.* 6.

PRO CONFESSO. When a defendant in a suit in chancery will not put in his *answer* to the plaintiff's *bill*, and the proper means have been resorted to, to compel him to do so, and yet he does not, and will not do it, the plaintiff may proceed to have the bill taken against the defendant *pro confesso* (i. e. as confessed) and to obtain a decree in the suit on the assumption that the defendant has *confessed* the truth of the bill: for by his not *answering* it, and remaining silent, it is assumed reasonably enough that he *confesses* the truth of its contents.—*Gray's Ch. Pr.* 172; *Cowel.*

PROCTOR (*procurator*). An officer in the ecclesiastical courts, whose duties correspond with those of an attorney in the common law courts. See also tit. *Procurator.*

PROCURATION (*procuratio.*) Indorsing a bill of exchange by *procuration*, is doing it as proxy or by authority of another.—*M'Culloch's Com. Dict.*

PROCURATOR. In its general signification means any one who has received a charge, duty or trust for another. Thus the *proxies* of lords in parliament are in our old law books called *procuratores*; so also a vicar or lieutenant was so called; and even the bishops were sometimes called *procuratores ecclesiarum.* From this word comes the term *proctor*, meaning one who acts for another in the ecclesiastical courts, the same as an attorney does for his client in the common law courts. The word *procurator* was also used for him who gathered the profits of a benefice for another man, and the word *procuracy* for the writing or instrument which authorized the *procurator* to act.—*Cowel*; *Les Termes de la Ley.*

PROCURATORIUM. The instrument by which a person or company authorized and empowered their proctors to represent them in any judicial court or cause.—*Cowel.*

PRODES HOMINES. The barons or other military tenants were so called in our old books.—*Cowel.*

PRODITORIE (*treasonably*). When indictments were in Latin, this was the technical word for *treason*, and was necessary to be inserted.—2 *Hawk. P. C.* 224.

PROFER (*proferer*, i. e. to offer, to produce). The time appointed for the accounts of sheriffs and other officers in the Exchequer, which was twice in the year. It is also used in

some writers to signify an offer or endeavour to proceed in an action. *Fleta, lib.* 1, *c.* 38; *Cowel.*

PROFERT IN CURIA (*he produces in court*). See tit. *Oyer of Deeds and Records.*

PROHIBITION (*prohibitio*). A writ issuing properly only out of the Court of King's Bench, being the king's prerogative writ; but for the furtherance of justice it may also be had in some cases out of the Court of Chancery, Common Pleas, or Exchequer, directed to the judge and parties of a suit in any inferior court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court. —3 *Bl.* 112.

PROHIBITIO DE VASTO DIRECTA PARTI. A judicial writ directed to the tenant of lands, &c. prohibiting him from committing waste on the land in question during the pending of the suit.—*Cowel.*

PRO INDIVISO (*as undivided*). The joint occupation or possession of lands: thus lands held by *coparceners* are held *pro indiviso*, that is, they are held *undivided*, neither party being entitled to any *specific* portion of the land so held, but both having a joint interest in the undivided whole.—*Cowel.*

PROMISE. In law is either express or implied. Express, when founded upon the express contract or declaration of the party promising; implied, when the promise is inferred from his acts, conduct or peculiar position. Thus, the law will always infer a promise by a debtor to pay a debt due to his creditor; and in an action against the debtor for recovery of the debt, such promise must be alleged in the declaration, although it need not be specifically proved. See also tit. *Assumpsit.*

PROMISES, *Action on.* Such an action as is brought for the recovery of damages for the breach or non-performance of any promise either express or implied.—3 *Bl.* 158; *Steph. Plead.* 19.

PROMISSORY NOTE. A written instrument by which one person engages or *promises* to pay a certain sum of money to another. It in many respects resembles a bill of exchange: the following is an ordinary form of a promissory note:—

£100: 0*s.* 0*d.*

London, 1*st March*, 1839.

On demand, I promise to pay to James Williams, or bearer, one hundred pounds, value received.

JOHN ANDERSON.

A promissory note of course varies from the above form according to circumstances; thus a party frequently promises to pay at a certain period *after the date* of it, instead of *on demand*, and then it would run thus: "*Three months* (as the case may be) *after date, I promise,*" &c. For full information on this subject, the reader is referred to M'Culloch's Commercial Dictionary, and to the various works on bills of exchange. —2 *Bl.* 467; *M'Culloch's Com. Dict.*

PROMOTERS (*promotores*). Those persons who in popular and penal actions prosecute offenders in their own name and in that of the king's, and are thereby entitled to a part of the fine or penalty inflicted on the offender as a reward for so prosecuting. The term is also applied to a party who puts in motion an ecclesiastical tribunal for the purpose of correcting the manners of any person who has violated the laws ecclesiastical, and, taking such a course, he

is said to "promote the office of the judge."—See *Taylor* v. *Morley*, 1 *Curt.* 470. It would appear that the office of the judge ought not to be promoted in a suit by more than one person, excepting in the case of churchwardens.—*Per Sir H. Jenner*, 2 *Curt.* 403.

PROMOTING THE OFFICE OF JUDGE. See tit. *Promoters.*

PRONOTARY. See tit. *Prothonotary.*

PROOF OF WILL. See tit. *Probate*; also tit. *Proving a Will.*

PRO PARTIBUS LIBERANDIS. A writ formerly in use for partition of lands between co-heirs.—*Cowel.*

PROPER. This word is frequently used to signify *own*, and is derived from the French *propre*, or the Latin *propria*, as "his own *proper* goods," "the *proper* business of an attorney," or, as in stat. 2 Geo. 2, c. 23, s. 23, "A month before action brought by any attorney, a bill shall be delivered by him to the party sought to be charged, subscribed with the *proper* hand of such attorney."—*Owen* v. *Scales*, 6 *Jur.* 1000.

PROPERTY (*proprietas*). A word of almost indefinite extent, including every species of acquisition which a man may have an interest in. Thus the terms *lands*, *goods*, *chattels*, *effects*, and indeed almost every term which represents an object in which a person may acquire an interest or a right, are included in the word *property*.—1 *Bl.* 138.

PROPERTY IN ACTION. See tit. *In Action.*

PROPOUNDER OF A WILL. He by whom it is brought forward, and who seeks to obtain for it the probate of the ordinary or of the Prerogative Court. This is generally the executor; but if any testamentary paper be left in the possession of, or materially benefits, any other person, it may be *propounded* by such person.—*Wood and others* v. *Goodlake, Helps and others*, 2 *Curt.* 84, 95.

PROPRIETARY (*proprietarius*). He who has a property in any thing; but the word was more especially applied to him who had the fruits of a benefice to himself and his heirs or successors, as abbots and priors had of old.—*Cowel.* See next title.

PROPRIETARY CHAPELS. There are four principal sorts of chapels: 1st, Private chapels; 2nd, Chapels of ease; 3rd, Free chapels; and 4th, Proprietary chapels. *Private chapels* are those which noblemen and other worthy and religious persons have at their own expense built in or near their own houses, for them and their families to perform religious duties in. These, and their ornaments, are maintained by those to whom they belong, and chaplains provided for them by themselves, with suitable pensions. The minister, by his appointment, gains no freehold interest, and may be dismissed whenever the party who appointed him thinks fit.—4 *B. & C.* 573; *Degge*, *O.* 1, *c.* 12; *Rog. Eccl. Law*, 149. 2nd. *Chapels of ease* are such as are built within the precincts of a parish church, and belong to the parish church and the parson of it.—2 *Roll. Abr.* 340, *l.* 50, 341, *l.* 2. It is a mere oratory for the parishioners, in prayers and preaching (sacraments and burials being received and performed at the mother church), and commonly the curate is removeable at the will of the parochial minister.—*Gibs.* 209; 1 *Burn's Eccl. Law*, 299. 3rd. *Free chapels* are such as are of royal foundation, or founded by subjects by the licence or grant of the crown. Hence they

are usually found upon the manors and ancient demesnes of the crown, where they were built, whilst in the king's hands, for the use of himself and his retinue when he came to reside there.—*Godol. Ab.* 146. 4th. *Proprietary chapels* are such as have been built within time of memory; and these are usually assessed to the rates as other building and dissenting chapels are. These chapels can exercise no parochial rights, and are described by Sir John Nicholl to be "anomalies unknown to the constitution and to the ecclesiastical establishment of the Church of England."—2 *Hag.* 46. See *Rog. Eccl. Law*, 147; *Burn's Eccl. Law.*

PROPRIETATE PROBANDA. A writ which is directed to the sheriff, requiring him to inquire, by inquest, whether goods distrained are the property of the plaintiff or of the person claiming them. This writ issues when to a writ of *replevin* the sheriff returns as his reason for not executing it, that the distrainor, or other person, claims a property in the goods distrained.—2 *Arch. Pract.* 827.

PRO RATA (*in proportion; at a certain rate*). As under certain circumstances the payment of freight is regulated according to the portion of the voyage performed, *pro ratâ itineris peracti.*—*Abbot on Shipping, by Shee*, 438, *et seq.*; 1 *M. & S.* 453; 5 *Taunt.* 512; 10 *East*, 378, 526. See also the phrase used in 2 *Williams's Exors.* 1459.

PROROGATION OF PARLIAMENT. See tit. *Dissolution of Parliament.*

PROTECTION (*protectio*). To be out of the king's *protection* signifies to be out of, or excluded from, the benefit of the law.—*Cowel.*

PROTECTION, *Writ of.* A prerogative writ which the king may grant to privilege any person in his service from arrest during a year and a day; this prerogative, however, is seldom exercised.—1 *Arch. Pr.* 179, 180; *Les Termes de la Ley.*

PROTECTOR OF SETTLEMENT. A functionary introduced or created by the 3 & 4 Will. 4, c. 74, as a check against improvident alienation.—*Hayes's Convey.* 132, 133.

PROTECTIONIBUS, *Statute de.* A statute for allowing a challenge to be entered against a protection.—33 *Edw.* 1, *st.* 1.

PROTEST (*protestatio*). In its most general and enlarged sense signifies an open declaration or affirmation. Thus, when in the House of Lords any vote passes contrary to the sentiments of any of its members, such members may, by leave of the house, enter their dissent on the journals of the house, with the reasons of such dissent, which is usually styled their *protest.* So also the term *protest*, as applied to bills of exchange, signifies a solemn declaration by the notary that the bill has been presented for acceptance or payment and was refused, &c. So also amongst mariners, a declaration made on oath before a magistrate or notary public in any distant port of the damage likely to ensue from a ship's delay, is termed a *protest.*—1 *Bl.* 168; 2 *Bl.* 468, 469.

PROTESTANDO. See tit. *Protestation.*

PROTESTATION (*protestatio*). A particular *formula* which was used in pleading was so termed; the nature of it may be thus explained:—It is frequently expedient for a party to plead in such a manner as to avoid any implied admission of a fact which cannot with propriety or safety be positively affirmed or denied; and

this might be done by the party interposing an oblique allegation or denial of some fact, *protesting* that such a matter did or did not exist, and at the same time avoiding a direct affirmation or denial, and this was technically termed a *protestation*. This, however, by a late rule of court, Hil. 4 Will. 4, is disallowed.—*Steph. on Plead.* 254; 3 *Bl.* 311.

PROTHONOTARY (*protonotarius*). An officer of the Court of Common Pleas, whose duties resembled in most respects those of our present masters of the courts. This office was abolished by 7 Will. 4 & 1 Vict. c. 30.—1 *Arch. Pract.* 21.

PROTOCOL. The first copy; the entry of any instrument in the book of a notary or public officer, and which, in case of the loss of the instrument, may be admitted as evidence of its contents.—*Tomlins.*

PROVE, *To*. See tit. *Proving a Will.*

PROVER. See tit. *Approver.*

PROVING A WILL. The act of establishing its validity before the (ecclesiastical) tribunal appointed for that purpose; and this act is indispensably necessary before *probate* will be granted of the will, i. e. before the court will give to the will the stamp and sanction of its authority as a legal testament of the deceased. This act of proving the will is usually performed by the executor, and is either in *common form*, which is only upon the executor's own oath, or *per testes*, i. e. upon the oath of witnesses, *in more solemn form of law*; which latter course is taken when the validity of the will has been, and sometimes even when it is likely afterwards to be, impeached. When the will is so proved, the original must be deposited in the registry of the court by which probate is granted, and a copy thereof in parchment is made out under the seal of the judge of the Prerogative Court, or of the ordinary of the diocese, as the case may be, and delivered to the executors, together with a certificate of its having been proved before him; all of which together is usually styled the *probate*. The tribunal before which the *proving of a will* takes place, and by which the *probate* is granted, varies according to the locality of the testator's effects. If all the goods of the deceased lie, at the time of his death, within the same diocese or jurisdiction, a probate before the ordinary of that diocese is the only proper one. But if the deceased had *bona notabilia* or chattels to the value of 100*s.* in two distinct dioceses or jurisdictions, then the will must be proved before the metropolitan of the province, by way of special prerogative; whence the courts where the validity of such will is tried, and the offices where they are registered, are called the *prerogative courts* and the *prerogative offices* of Canterbury and York. And this prerogative consists of the power of making one probate (and one administration also) serve for all the dioceses, however numerous, in which the deceased had *bona notabilia*.—1 *Wms. on Exors.* 210, 3*rd edit.*; *Rog. Eccl. Law*, 945; 4 *Burn's Eccl. Law*, 248; 1 *T. R.* 480; 7 *A. & E.* 240, 243; 1 *Godolph. c.* 20, *s.* 4; 2 *M. & W.* 87; 4 *Inst.* 335; 1 *Horn. & Hurl.* 319.

PROVISIONAL ASSIGNEE. Was an assignee to whom the property of a bankrupt was assigned until the regular or permanent assignees were appointed by the creditors. But the 1 & 2 Will. 4, c. 56, s. 22, and 5 & 6 Vict. c. 122, s. 48, having enacted that until assignees shall be chosen by the creditors of each bankrupt, the official assignee to be appointed

to act with the creditors' assignees shall be enabled to act, and shall be deemed to be to all intents and purposes a sole assignee of each bankrupt's estate and effects, provisional assignees are no longer necessary, or rather the official assignees are such provisional assignees in all cases.—1 *Mont. & Ayr. Bank.* 159.

PROVISIONS. The nominations to benefices by the pope were so called, and those who were so nominated were termed *provisors*. There was an act passed in the reign of Edw. 3, forbidding all ecclesiastical persons from purchasing these *provisions*.—1 *Bl.* 60, 61.

PROVISO. A condition or provision which is inserted in deeds, and on the performance or nonperformance of which the validity of the deed frequently depends; it usually begins with the word *provided*. Thus in leases there is usually a *proviso* that if the rent be unpaid for the space of twenty-one days after the day appointed for the payment of it, that it shall be lawful for the lessor to enter into possession of the premises.—4 *Cruise*, 376. So in mortgage deeds, that part which provides that on payment of the mortgage money by the mortgagor, the mortgagee shall re-convey the estate to the mortgagor, is termed the *proviso for redemption*, because it is by virtue of that proviso that the mortgagor is empowered to *redeem* his estate.

PROVISO FOR REDEMPTION. See tit. *Proviso.*

PROVISO, *Trial by.* In all cases in which the plaintiff, after issue joined, does not proceed to trial, when by the course and practice of the court he might have done so, the defendant may, if he wishes, give the plaintiff notice of trial, and proceed to trial as in ordinary cases; and this is termed a *trial by proviso*. It is so called, because in the *distringas* to the sheriff there is a *proviso*, that if two writs shall come to his hands, he shall execute one of them only.—2 *Arch. Pract.* 1100, 1101.

PROVISOR. See tit. *Provisions.*

PROVOST MARSHAL. An officer of the king's navy who has charge of the prisoners taken at sea, and sometimes also performs the same duties on land.—*Cowel.*

PUBLIC ACT OF PARLIAMENT. Is an act which concerns the whole community, and of which the courts of law are bound judicially to take notice. See for distinction between a *Public and Private Act* tit. *Private Act of Parliament.* See also tit. *Private Bills.*

PUBLIC BILLS. See tit. *Private Bills.*

PUBLICATION. This word, as applied to the depositions of witnesses in a suit in chancery, signifies the right which is exercised by the clerks in court, or the examiner, of openly showing the depositions as taken at the examination of such witnesses; which is done either by an order of the Court of Chancery, or by consent of the parties in the suit.—3 *Bl.* 450; *Goldsmith's Chan. Pr.* 177.

PUBLISH. The publishing of a will by a testator signifies the declaration which he makes (usually at the time of signing it), in the presence of a proper number of witnesses, that it is his last will and testament.—*Lovelass on Wills.*

PUIS DARREIN CONTINUANCE (*since the last adjournment or continuance*). This was a plea so called, but which since the abolition of *continuances* has been consequently dis-

used, and another (viz. a *plea to the further maintenance of the action*) has been substituted for it. As it was a plea of some importance the following outline of its history may not be altogether out of place. "By an ancient practice very recently abandoned, when adjournments of the proceedings took place for certain purposes from one day or one term to another, there was always an entry made on the record expressing the ground of the adjournment and appointing the parties to reappear at a given day, which entries were called *continuances*. In the intervals between such continuances and the day appointed, the parties were of course *out of court*, and consequently not in a situation to plead. But it sometimes happened, that after a *plea* had been pleaded, and while the parties were out of court in consequence of such a continuance, a new matter of defence arose, which did not exist *before* the last continuance, and which the defendant had consequently no opportunity to plead before that time. This new defence he was therefore entitled, at the day given for his reappearance, to plead, as a matter that had happened *after* or *since* such last continuance (*puis darrein continuance*), and therefore termed a plea *puis darrein continuance*.—*Stephen on Pleading*, 70, 71; 1 *Arch. Pract.* 460.

PUISNE (Fr. *puisné*). Younger, subordinate. Thus all the judges, *excepting the chiefs* are termed *puisne judges*; that is, they are subordinate to their respective chiefs.—3 *Bl.* 40, 41, 44. As to *mulier puisne*, see tit. *Eigne*.

PUR AUTER VIE (*for the life of another*). An estate *pur auter vie* is an estate which endures only for the life of some particular person. Thus, if A. lease lands to B. to hold and enjoy them for or during the life of C., B. is said to have an estate *pur auter vie*; that is, *during the life of another*, viz. the life of C., and B. is also then called with respect to his interest in such lands a tenant *pur auter vie*, and C., for or during whose life B. holds his lands, is termed the *cestui que vie*.—2 *Bl.* 120.

PURCHASE (*perquisitum*). The word *purchase* is used in law in contradistinction to *descent*; and is any other mode of acquiring real property than by the common course of inheritance. So that the word is not *merely* used in its popular sense, viz. that of buying for a sum of money, but implies *any mode* of acquiring property *excepting by descent*. Thus, if a person acquires real property by gift, grant, or by devise, or by any other mode (excepting descent), and which does not even subject him to the payment of any sum of money for such property, he is still in legal language said to acquire such property by *purchase*. The difference between the acquisition of an estate by descent and by purchase consists principally in two points. 1. That by purchase the estate acquires a new inheritable quality, and is descendible to the owner's blood in general. 2. That an estate taken by purchase will not make the person who acquires it answerable for the acts of his ancestors as an estate by descent will.—3 *Cruise*, 451, 452; 2 *Bl.* 201.

PURPARTY (*purpars*). That part or share of an estate which after having been held in common by coparceners is by partition allotted to any of them.—*Cowel*.

PURPRESTURE or PURPRESTER. A word derived from the Fr. *pourpris*, which signifies to take from another and to appropriate to himself; hence a *purpresture* in a general sense signifies any such wrong done by one

man to another. Purpresture in a forest signified any incroachment upon the king's forest, whether by building, inclosing, or using any liberty without a lawful warrant to do so.—*Les Termes de la Ley*; 4 *Bl.* 167.

PURVEYANCE. See tit. *Preemption.*

PURVIEW. The purview of an act of parliament is that part of it which begins with the words "Be it enacted," &c.—*Cowel.*

PUTATIVE FATHER. The alleged or reputed father of an illegitimate child is so called.

PUTTING IN SUIT. As applied to a bond or any other legal instrument signifies bringing an action upon it, or being made the subject of an action. Thus in 43 Geo. 3, c. 99, it is enacted, that the collectors appointed by the commissioners of taxes shall give security by a joint and several bond, with two sureties, &c. "provided always that no such bond *shall be put in suit* (i. e. be made the subject of any action) against any surety or sureties for any deficiency other than what shall remain unsatisfied after the sale" of the defaulting collector's goods.—1 *Scott, N. R.* 711.

PYEING (probably from *pie*, used by the Romish clergy for an *index* to find out the services of the church; from the Greek πινακ, met. a list or register; Lat. *pica*). Is an old law phrase, signifying the sorting or selecting the declarations given in by the plaintiffs in actions at law from that confused manner in which they were brought in, and reducing them into an alphabetical order, for the more ready finding them, &c.—*Boote's Suit at Law*, 137, n. (4); *Richardson's Eng. Dict. tit. Pie.*

Q.

QUÆ EST EADEM (*which is the same*). Are formal words used in pleading to supply the want of a traverse. As in the case of a man bringing an action of trespass, and the defendant pleads that the plaintiff gave him leave to enter on the land and that he entered accordingly, "which is the same trespass of which the plaintiff complains, (*quæ est eadem transgressio*).—2 *Lil. Abr.* 405; *Tomlins.*

QUÆ PLURA. A writ which formerly lay when an inquisition had been made by an escheator in any county of such lands and tenements as any man died seised of, and it was imagined that all which were in his possession were not found by the office.—*Reg. Orig.* 293; *Cowel.*

QUÆRENS NON INVENIT PLEGIUM. A return made by the sheriff upon a writ directed to him with this condition inserted: *Si* A. *fecerit* B. *securum de clamore suo prosequendo.*—*Cowel*; *F. N. B. fol.* 38.

QUÆ SERVITIA. See tit. *Per quæ servitia.*

QUÆSTUS. That which a man acquires by purchase, as distinguished from *hæreditas*, which is that which a man acquires by descent.—*Glan. lib.* 7, *c.* 1.

QUALE JUS. A judicial writ that lay, when a man of religion had judgment to recover land, before execution issued on such judgment; for this writ issued to the escheator, between judgment and execution, to inquire whether such religious person had any right to recover, or whether the judgment was obtained by collusion between the demandant and

tenant with the intention of defrauding the true lord.—*Old Nat. Brev.* 161; *Cowel.*

QUALIFIED FEE. See tit. *Base Fee.*

QUAMDIU SE BENE GESSERIT (*as long as he conducts himself well*). A clause frequently inserted in the grant of offices, &c. by letters patent; signifying that the party shall hold the same *as long as he behaves himself well* (quamdiu se bene gesserit).—*Co.* 4 *Inst.* 117; *Cowel.*

QUANDO ACCIDERINT (*when they may happen*). Judgment of assets *quando acciderint* is a judgment which is sometimes signed against an executor, and which empowers the party so signing it to have the benefit of *assets* which may at any time afterwards come to the hands of the executor, or *whenever they may happen.*—2 *Arch. Pract.* 931.

QUANTUM MERUIT (*as much as he deserved*). These words are thus explained by Blackstone. "If I employ a person to transact my business for me, or perform any work, the law implies that I undertook or assumed to pay him so much as his labour deserved: and if I neglect to make him amends, he has a remedy for this injury by bringing his action on the case upon this implied *assumpsit* or promise; wherein he is at liberty to suggest that I promised to pay him *so much as he reasonably deserved,*" and this action on the case is thence termed an action of *assumpsit* on a *quantum meruit*, that is, an action for breach of my promise to pay him *as much as he deserved.* There is also an action of *assumpsit* on a *quantum valebat* (i. e. *as much as it was worth*), which is very similar to the former, being only where one takes up goods or wares of a tradesman without expressly agreeing for the price. There, the law concludes that both parties did intentionally agree that the real value of the goods should be paid, and therefore an action may be brought for the breach of the implied promise to pay as much for the goods as they were worth.—3 *Bl.* 162, 163.

QUANTUM VALEBAT. See tit. *Quantum meruit.*

QUARANTINE. See tit. *Quarentine* or *Quarentaine.*

QUARE CLAUSUM FREGIT (*wherefore he broke the close*). That species of the action of trespass which has for its object the recovery of damages for an unlawful entry upon another's land is termed an action of trespass *quare clausum fregit*;—"breaking a close" being the technical expression for an unlawful entry upon land. The language of the declaration in this form of action is "that the defendant with force and arms *broke and entered the close*" of the plaintiff.

QUARE EJECIT INFRA TERMINUM. A writ which lay for a lessee when he was cast out or *ejected* from his farm before the expiration of his term, against the lessor or feoffee who so ejected him, to recover the residue of his term and also damages for being so ejected.—*Cowel; Les Termes de la Ley.*

QUARE IMPEDIT (*why or wherefore he hinders*). The action of *quare impedit* is the remedy by which a party whose right to a benefice is obstructed recovers the presentation; and is the form of action now constantly adopted to try a disputed title to an advowson.—1 *Arch. Pract.* 348; *Stephen on Pleading*, 11.

QUARE INCUMBRAVIT (*wherefore he has incumbered*). A special action against a bishop to recover the pre-

sentation of a living, and also satisfaction in damages for the injury done to the plaintiff by *incumbering* the church with a clerk during the pending of a suit concerning the right of presentation.—3 *Bl.* 248.

QUARE NON ADMISIT (*wherefore does he not admit*). A writ which lies against a bishop to recover satisfaction in damages for not admitting and instituting the clerk of a patron, whose right to present has been established by judgment of a court of law.—*F. N. B.* 47.

QUARE NON PERMITTIT. A writ that lay for one, who had a right to present to a benefice for a turn, against the proprietary. — *Cowel; Fleta, lib. 5, c. 6.*

QUARENTINE or QUARENTAINE (*quarentina*). Is a term signifying the number of forty days. It more commonly refers to the period of forty days which persons coming from infected countries, or from countries supposed to be infected, are obliged to wait on board ship before they are permitted to land either in England, or in her possessions abroad. But in law it more strictly applies to the similar period during which a widow entitled to dower, is permitted to remain in her husband's capital mansion house after his death, while she awaits its assignment.—*F. N. B.* 161; *Cowel;* 1 *Stephen's Bl.* 253; 1 *Roper on Hus. and Wife,* 388.

QUARE OBSTRUXIT. A writ that lay for him who having a liberty to pass through his neighbour's grounds, was prevented enjoying such liberty, by reason of the owner of the ground having obstructed it.—*Les Termes de la Ley.*

QUARREL (*querela, à querendo*). This word is said to extend not only to real and personal actions, but also to the causes of actions and suits; so that by the release of all quarrels, not only actions pending, but also causes of action and suit are released; and quarrels, controversies, and debates are in law considered to have one and the same signification.—*Co. lib.* 8, 153; *Les Termes de la Ley.*

QUARTER CORD. The miners or proprietors of mines within the soak and wapentake of Wirksworth are entitled to a privilege of using seven yards and a quarter of land in breadth, adjoining on each side of the mine or vein so far as the mine or vein extends in length, for the purpose of working the mine, which is called "*quarter cord.*"—*Rowls* v. *Gells, Cowp.* 451, 452.

QUARTER SESSIONS. See tit. *Session.*

QUARTO DIE POST. The fourth day after the term.—*Arch.* 97.

QUASH (*cassum facere*). To make void, to cancel, to abate. Thus, to quash a plea, an order of sessions, &c. is to annul or cancel the same.—3 *Bl.* 303; 4 *Mer. & M.* 497; 2 *B. & Ad.* 203.

QUASI CONTRACT. An implied contract.—*Tomlins.*

QUE ESTATE (*which* or *whose estate*). A term used in pleading, the nature of which may be thus explained. Formerly it was necessary when there was occasion to plead a prescriptive right to any easement or profit, or benefit arising out of land (as for example, a prescriptive right of way or common), to allege *seisin in fee* of the land in respect of which the right was claimed, and then to allege that he and *all those whose estate he had* in the land, had from time immemorial exercised the right in question; and this was termed prescribing in a *que estate* from the words

in italics.—*Stephen on Pleading*, 333; 2 *Chitty's Bl.* 264, *note* 3.

QUE EST EADEM. See tit. *Quæ est eadem.*

QUE EST LE MESNE. See tit. *Quæ est eadem.*

QUEEN ANNE'S BOUNTY. Is a perpetual fund for the augmentation of poor livings in the Church of England, arising out of the revenue of the first fruits and tenths, which Queen Anne (by charter subsequently confirmed by stat. 2 & 3 Ann. c. 11) vested in trustees for ever for that purpose. Those "first fruits" and "tenths," having been (as explained under their own titles) originally a tax enforced by the popes from the richer English clergy, formed subsequently to the Reformation a branch of the revenue of the crown, and subject to various alterations in amount; they so remained until the reign of Queen Anne, who did not remit them unconditionally, but applied these superfluities of the larger benefices to make up the deficiencies of the smaller. This fund still exists and is regulated by a variety of statutes, of which the first is the 5th of Anne, c. 24, and the last the 5th of Vict. c. 39.—1 *Bl. Com.* 284; 2 *Stephen's Bl.* 550.

QUEEN'S ADVOCATE. An advocate of the civil law bar appointed by the crown to maintain its interests and to advise it in all matters in which the learning of the civil law is involved. Those matters include important questions of international law, upon which (as in framing treaties with foreign nations) the counsel of the queen's advocate is frequently taken by the government. In the legal profession this officer holds a distinguished place. He now ranks next in dignity to the attorney and solicitor-general, and formerly indeed, the queen's advocate took precedence even of them. The queen's advocate practises in the ecclesiastical courts at Doctors' Commons.

QUEEN'S BENCH, *Court of.* See tit. *King's Bench.*

QUEEN'S BENCH PRISON. Sometimes called the prison of the Marshalsea of the Court of Queen's Bench, was a prison for debtors and for persons confined under the sentence, or charged with the contempt of her Majesty's Court of Queen's Bench. This prison, the Fleet and the Marshalsea prisons, were by the 5 Vict. c. 22, consolidated under the title of the Queen's Prison; which latter is by the above act appointed to receive all the prisoners formerly distributed among the three.—6 *Jur.* 254.

QUEEN'S COUNSEL. See title *King's Counsel.*

QUEEN'S GOLD (*aurum reginæ*). Is an ancient perquisite to which every queen consort of England is entitled during her marriage with the king; and it consists of a sum of money which is due from every person who hath made a voluntary offering or fine to the king, amounting to ten marks or upwards, in consideration of any privileges, grants, licences, pardons or other matters of royal favour conferred upon him by the king. Its amount is fixed at the proportion of one-tenth part more, over and above the entire offering to the king, and becomes an actual debt of record to the queen by the mere recording of the fine. As if one hundred marks of silver be given to the king for liberty to have a market, chase or free warren, there the queen is entitled to ten marks in silver, or (what was formerly an equivalent denomination) to one mark in gold, by the name of *queen's gold.*—

Pryn. Aur. Reg. 2; 12 *Rep.* 21; 4 *Inst.* 358; *Madox's Hist. Exch.* 242; *Cowel.*

QUEEN'S PRISON. See title *Queen's Bench Prison.*

QUEM REDDITUM REDDAT. A judicial writ which lay for him to whom a rent seck or rent charge was granted by fine levied in the king's court, against the tenant of the land who refused to attorn to him, thereby compelling him to attorn.—*Les Termes de la Ley; Cowel; Old Nat. Brev.* 126.

QUERELA. An action preferred in any court of justice in which the plaintiff was *querens* or complainant, and his brief, complaint or declaration was *querela.* Thus, *quietus esse à querela* was to be exempted from the customary fees paid to the king or lord of a court, for liberty to prefer such an action.—*Cowel.*

QUERELA CORAM REGE A CONSILIO DISCUTIENDÆ ET TERMINANDA. A writ by which one was called to justify the complaint of a trespass, made to the king himself before the king and his council.—*Reg. Orig.* 124; *Cowel.*

QUERELA FRESCÆ FORTIÆ. See tit. *Fresh Force.*

QUEST (*questa*). See tit. *Inquest.*

QUESTION. See tit. *Rack.*

QUESTUS EST NOBIS (*hath complained to us*). The form of a writ of nuisance, which by the statute 13 Edw. 1, c. 24, lay against him to whom the house or other thing which occasioned the nuisance was aliened, whereas before that statute the action lay only against him who first occasioned such nuisance.—*Cowel.*

QUI TAM, *Suing.* Prosecuting a popular action for the purpose of recovering the penalty, is called suing *qui tam,* because the prosecutor or informer sues *as well* for the crown as he does for himself.—See tit. *Qui tam Actions.*

QUI TAM ACTIONS. Those kind of *popular* actions in which one part of the penalty recovered is given to the king, to the poor, or to some public use, and the other part to the informer or prosecutor. It is called a *qui tam* action, because it is brought by a person "*qui tam pro domino rege, &c. quam pro se ipso in hac parte sequitur*" (i. e. who sues *as well* for our lord the king as for himself).—3 *Bl.* 162.

QUIA DOMINUS REMISIT CURIAM. See tit. *Writ of Right.*

QUIA EMPTORES (*because the purchasers*). The statute 18 Edw. 1 is so called. This statute took from the tenants of common lords the feodal liberty they claimed of disposing of part of their lands to hold of themselves, and instead of it gave them a general liberty to sell all or any part, to hold of the next superior lord, which they could not have done before without consent. — *Wright's Ten.* 161; 4 *Cruise,* 6.

QUIA IMPROVIDE. A *supersedeas* granted in behalf of a clerk in chancery, who was sued against the privilege of that court, in the Common Pleas, and pursued to the *exigent.* It was also granted in many other cases in which writs were erroneously sued.—*Cowel.*

QUID JURIS CLAMAT. A judicial writ which issued out of the record of a fine, which remained with the *custos brevium* of the Common Pleas before it was engrossed; and it lay for the grantee of a reversion

or remainder, when the particular tenant would not attorn.—*Reg. Judic.* 36, 57; *Cowel.*

QUID PRO QUO (*what for what*). Used in law for the giving one valuable thing for another. It is nothing more than the mutual consideration which passes between the parties to a contract, and which renders it valid and binding.—*Cowel.*

QUIETANTIA. See tit. *Acquittance.*

QUIETARE. To acquit, quit, discharge or save harmless.—*Cowel.*

QUIETE CLAMARE. To cease, quit or give up claim, or renounce all pretensions of right and title.—*Cowel.*

QUIETUS. A word which was commonly used by the clerk of the pipe and auditors in the Exchequer in their acquittances or discharges given to accountants, signifying to be freed, acquitted, or discharged.—*Cowel.*

QUIETUS REDDITUS. See title *Quit Rent.*

QUILLETS. Certain districts and places, parcel of some one county, but wholly situate within, and surrounded by some other county, are so termed.—*Atk. Sh. Law*, 2; *Hearne's Coll.* 50.

QUINQUE PORTUS. See tit. *Cinque Ports.*

QUINTO EXACT (*quintus exactus*, mentioned in 31 Eliz. c. 3). The fifth or last call of a defendant against whom proceedings in outlawry have been taken, when, if he appear not, he is by the judgment of the coroners, returned outlawed; if a woman, *waved.*—*Cowel*; 3 *Bl.* 283; 2 *Arch.* 929.

QUIT CLAIM (*quieta clamantia*). The release or acquitting of one man by another, in respect of any action that he has or might have against him; also acquitting or giving up one's claim or title.—*Bracton, l. 5, tract. 5, c. 9, num. 6*; *Les Termes de la Ley.*

QUIT RENT (*quietus redditus*). Certain established rents of the freeholders and ancient copyholders of manors are denominated quit rents, *quieti redditus*, because thereby the tenant goes quit and free of all other services.—3 *Cruise*, 314.

QUO JURE. A writ that lay for him who had land wherein another challenged common of pasture time out of mind, to compel him to show by what right or title he challenged it.—*F. N. B.* 128; *Cowel.*

QUO MINUS. A writ upon which all proceedings in the Court of Exchequer were formerly grounded, in which the plaintiff suggested that he was the king's farmer or debtor, and that the defendant had done him the injury or damage complained of, *quo minus sufficiens existit, by which he was the less* able to pay the king his debt or rent. It was also a writ which formerly lay for one who had a grant of house-bote and hay-bote in another man's woods, against the grantor for making such waste as interfered with the grantee's enjoyment of his grant.—3 *Bl.* 46; *Cowel.*

QUO WARRANTO. A writ which lies for the king against any one who claims or usurps any office, franchise or liberty, to inquire *by what authority* he supports his claim, in order to determine the right. It lies also in case of non-user or long neglect of a franchise, or mis-user or abuse of it, being a writ commanding the defendant to show by what warrant he exercises such a franchise, having

never had any grant of it, or having forfeited it by neglect or abuse.—3 *Bl.* 262, 263; *Finch's L.* 322.

QUOAD (*as to, concerning, &c.*) A prohibition *quoad* is a prohibition *as to* certain things amongst others. Thus, where a party was complained against in the ecclesiastical court for matters cognizable in the temporal courts, a prohibition *quoad* these matters issued, i. e. *as to* such matters the party was prohibited prosecuting his suit in the ecclesiastical court. The word is also frequently applied to other matters than prohibitions. See 2 *Roll. Abr.* 315, *b.* 10; *Vin. Abr. tit. Prohib. E. a.* 7; 5 *Mod. Rep.* 433.

QUOAD HOC (*as to this*). A phrase used in our law reports, meaning *as to the thing named*, the law is so, &c. —*Tomlins.*

QUOD CLERICI BENEFICIATI DE CANCELLARIA. A writ to exempt a clerk of the chancery from the contribution towards the proctors of the clergy in parliament.—*Cowel; Reg. Orig.* 261.

QUOD CLERICI NON ELIGANTUR IN OFFICIO BALLIVI. A writ which lay for a clerk, who, by reason of some land he had, was made, or fearful of being made, a bailiff, beadle, reeve or some such officer.—*F. N. B.* 261; *Cowel.*

QUOD EI DEFORCEAT. A writ that lay for a tenant in tail, tenant in dower, or tenant for life, who had lost their lands by default, against him who recovered them, or against his heir.—*Reg. Orig.* 171.

QUOD PERMITTAT. A writ that lay for the heir of him who was disseised of his common of pasture, against the heir of the deceased disseisor.—*Cowel.*

QUOD PERMITTAT PROSTERNERE. A writ which lay against any person who erected a building, though on his own ground, so near to the house of another that it overhung it, and became a nuisance to it.—2 *Lill. Abr.* 413; *Tomlins.*

QUOD PERSONA NEC PREBENDARII, &c. A writ which lay for spiritual persons who were distrained in their spiritual possession for the payment of a fifteenth, with the rest of the parish.—*F. N. B.* 176; *Cowel.*

QUOD RECUPERET (*that he recover*). The usual form of a judgment for the plaintiff is, *that the plaintiff do recover*, which is called a judgment *quod recuperet.*—*Steph. on Pleading.*

QUORUM (*of whom*). Among the justices of the peace appointed by the king's commission, there were some who were more eminent for their skill and discretion than others, one *of whom* on special occasions the commission expressly required should be present, and without whose presence the others could not act; and who were thence termed justices of the *quorum*, from the language of the commission, which ran thus: "*quorum aliquem vestrum* A. B., C. D., &c. *unum esse volumus,*" (i. e. *of whom* we wish that some one of you, A. B., C. D., &c. to be present). The word is used in a similar sense in the following passage: "By charter 2 Edward 4, the mayor, recorder and aldermen that have been mayors, shall be conservators of the peace within the city; and they, or four of them, *quorum* the mayor to be one, shall be justices of oyer and terminer there." —*Com. Dig. tit. London* (*C.*), *Mayor.* See also *Dickinson's Guide*, 67, *5th ed.*

QUORUM NOMINA. A writ which lay for the king's collectors and other accountants, in the reign of Hen. 6

(who were much troubled in passing their accounts by new extorted fees), for allowance of the barons of the *cinque ports*, and their suing out their *quietus* at their own charge, without allowance for the king.— *Cowel.*

QUOUSQUE (*until*). Thus a seizure *quousque* by the lord of a manor on default of the heir coming in to be admitted, means a seizure *until* the heir so comes in; the lord being entitled to do this after three proclamations made at three consecutive courts.— *Watkins on Copyholds*, 230, tit. *Admission*; *Carth.* 41; 1 *Lev.* 63; 3 *T. R.* 162. A prohibition *quousque*, is a prohibition by which something is forbidden or prohibited *until* a certain time. Thus, if in trying temporal incidents in the ecclesiastical courts, they reject a mode of proof sufficient at common law, they may be prohibited *quousque* (until) they submit to a legal mode of trial.— *Yelv.* 92; 1 *T. R.* 556; *Rog. Eccl. Law*, 745.

R.

RACK or QUESTION. An instrument formerly used in this country for extorting confession from accused persons.—4 *Bl.* 325. See also title *Peine fort et dure.*

RACK-RENT. A rent of the full annual value of the tenement, or near it.—2 *Bl.* 43.

RAGEMEN. A statute of the reign of Edward 1 is so called, by which justices were assigned by Edward 1 and his council to go a circuit through all England, and to hear and determine all complaints of injuries done within five years next before Michaelmas, in the fourth year of his reign.— *Cowel.*

RAILWAY BILLS, *Committees on.* Railway, like other private bills, are referred to select committees after being read a second time. The committees to which such bills are referred are at present specially constituted under a sessional order of 1844, and consist of five members each, appointed by the Committee of Selection, who sign a declaration that their constituents have no local, and that they have no personal, interest in the bills to come before them. In cases where there are bills for different or competing lines in the same district, they are all referred to the same committee, which is distinguished as Group A., B. or C., 1, 2 or 3. Of the five members of which these committees consist, three are sufficient to form a quorum.

RAISING A USE. Creating, establishing or calling a use into existence. Thus, if a man conveyed land to another in fee, without any consideration, equity would presume that he meant it to the use of himself, and would therefore *raise* an implied use for his benefit. See title *Use*; also *Saunders on Uses and Trusts*, *c.* 1, *s.* 9, *5th edit.*; 1 *Cru. Dig.* 442; 1 *Steph. Bla.* 333.

RAN. A Saxon word, signifying open or public theft.— *Cowel.*

RANSOM (*redemptio*). In law this word is frequently used to signify a sum of money paid for the pardoning of some great offence: and the distinction made between a *ransom* and an *amerciament* is, that a ransom is the *redemption* of a corporal punishment, whereas an amerciament is a *fine* by way of penalty for an offence committed. — *Litt.* 127; *Lambard's Eirenarcha*; *Cowel.*

RAPE (*rapus*). A section or division of a county so called: also a trespass committed in the forest by

violence is termed *rape of the forest:* also the ravishing a woman, or the carnal knowledge of her against her will, is termed a *rape.*—*Britton, c.* 1; *Cowel.*

RAPINE (*rapina*). The open or violent taking of any thing from a person against his will.—14 *Car.* 1, *c.* 22; *Cowel.*

RAPTU HÆREDIS. A writ which lay for the taking away an heir who held in socage; of which there were two sorts, one when the heir was married, the other when he was not. *Cowel.*

RATE-TITHE. Tithes paid after a certain rate; as when sheep or other cattle are kept in a parish for a less time than a year, the owner must pay tithe for them *pro rata*, according to the custom of the place; which is termed *rate-tithe.*—*Les Termes de la Ley; F. N. B.* 51.

RATIHABITIO. Ratification, confirmation, &c.—18 *Vin. Abr.* 156.

RATIONABILI PARTE. See tit. *Recto de Rationabili Parte.*

RATIONABILI PARTE BONORUM. A writ that lay for the wife against the executors of her husband, to have the third part of his goods after his just debts and funeral expenses had been paid.—*F. N. B.* 122; *Les Termes de la Ley.* See also tit. *Reasonable Part.*

RATIONABILIBUS DIVISIS. A writ that lay for the lord of a seignory, when he found that any portion of his seignory or his waste had been encroached upon by the lord of an adjacent seignory, against him who had so encroached, in order to settle their boundaries.—*Cowel; F. N. B.* 128.

RAVISHMENT DE GARD (*ravishment of ward*). A writ that lay for the guardian by knight service or in socage against him who took away from him the body of his ward.—12 *Car.* 2, *c.* 24; *Cowel.*

RE (*in the matter of*). Thus, *Re Vivian*, signifies in the *matter of Vivian*, or in *Vivian's case.*

RE-AFFORESTED. The converting again into a forest that which had been dis-afforested.—*Cowel.*

RE. FA. LO. See tit. *Recordari Facias Loquelam.*

READERS. In the Middle Temple those persons are so called who are appointed to deliver lectures or *readings* at certain periods during the term. The clerks in holy orders who read prayers and assist in the performance of divine service in the chapels of the several inns of court, are also so termed.—See 5 *Reeves's Eng. Law*, 247.

READING IN. A new incumbent of a benefice is to read, within two months after actual possession, the morning and evening prayers, and declare his unfeigned assent and consent thereto publicly in the church, before the congregation, in the following form:—"I, A. B., do hereby declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the book entitled the Book of Common Prayer, and administration of the sacraments and other rites and ceremonies of the church, according to the use of the united Church of England and Ireland, together with the Psalter or Psalms of David, appointed as they are to be said or sung in churches, and the form of making, ordaining, and consecrating of bishops, priests, and deacons." He is also to read the thirty-nine articles in the

church in the time of common prayer, and to declare his unfeigned assent thereunto, within two months after induction; and to read in his church, within three months after institution or collation, the declaration appointed by the Act of Uniformity, and also the certificate of his having subscribed it before the bishop. The observance of the above forms by a new incumbent constitutes what is termed "reading in."—*Rog. Ecc. Law; Burn's Ecc. Law.*

REAL. The word *real* is in law generally applied to land, in contradistinction to *personal*, which is applied to things of a moveable nature: thus real actions are such actions as have reference to the recovery of lands, tenements, or hereditaments, &c.; *real property* is such property as is of a fixed, substantial, and *real* character, such as lands and tenements, &c. For further information on the subjects *real actions*, *real property*, and *real estate*, the reader is referred to the respective titles of *Action*, *Property*, and *Estate*.—2 *Bl.* 16; 3 *Bl.* 117.

REAL REPRESENTATIVE. He who *represents* or stands in the place of another with respect to his *real* property is so termed, in contradistinction to him who stands in the place of another with regard to his *personal* property, and who is termed the *personal* representative. Thus, the *heir* is the real representative of his deceased ancestor. See also tit. *Representation.*

REALTY. That which relates to *real* property (i. e. to lands, tenements, and hereditaments) in contradistinction to that which relates to personal property (i. e. to moveable things in general), which is termed *personalty.*

REASONABLE AID. See tit. *Aid.*

REASONABLE PART. The shares to which the wife and children of a deceased person were entitled were called their *reasonable parts;* and the writ *de rationabili parte bonorum* was given to recover them.—2 *Bl.* 492; *F. N. B.* 122.

RE-ATTACHMENT (*reattachiamentum*). A second attachment, or an attachment of a person who has been previously attached, and has been dismissed the court without day, from the happening of some casual circumstance.—*Cowel.*

REBELLION, *Commission of.* See tit. *Commission of Rebellion.*

REBUTTER (from the Fr. *bouter*, that is, to repel, to put back, to bar, &c.) In an action at law the alternate allegations of fact (i. e. the pleadings) are denominated as follows: *declaratim*, *plea*, *replication*, *rejoinder*, *surrejoinder*, *rebutter*, and *surrebutter*. The *declaration* is the statement of the plaintiff's cause of complaint; the *plea* is the defendant's answer to the declaration; the *replication* is the plaintiff's answer or reply to the plea; the *rejoinder* is the defendant's answer to the *replication;* the *surrejoinder* the plaintiff's answer to the rejoinder; the *rebutter* the defendant's answer to the surrejoinder; and the *surrebutter* the plaintiff's answer to the rebutter. It is also used in another sense: thus, if a man grants land to the use of himself and the issue of his body, to another in fee with warranty, and the donee leases out his land to a third person for years, the heir of the donor sues the tenant, alleging that the land was in tail to him; the donee comes in, and by virtue of the warranty made by the donor, repels the heir, because, though the land was entailed to him, yet he is heir to the warrantors likewise; and this repelling the heir by the donee is termed a *rebutter.*—*Bro.*

tit. Barre, num. 23; *Stephen on Pleading*; 3 *Bl.* 310.

RECAPTION (*recaptio*). Reception or reprisal is a species of remedy by the mere act of the party injured; and is resorted to when any one has deprived another of his property in goods or personal chattels, or wrongfully detains one's wife, child, or servant, in which case the owner of the goods, and the husband, parent, or master, may lawfully claim and *retake* them wherever he happens to find them, so that it be not in a riotous manner, or attended with a breach of the peace, which retaking is termed *recaption*. There is also a *writ of recaption* to recover damages against a person who (pending a replevin for a former distress) distrains a man again for the same rent or service.—3 *Bl.* 4, 151.

RECEIVER (*receptor*). He who receives stolen goods from thieves, and conceals them. There are also other kinds of receivers, *as the receiver of the fines*, who was an officer who received the money of all such as compounded with the king upon original writs in Chancery: the *receiver general of the duchy of Lancaster*, who is an officer belonging to the duchy court, who gathers in all the revenues and fines of the lands belonging to that duchy, and all forfeitures and assessments belonging to the same. There is also a person who is appointed by the Court of Chancery to receive the rents, issues, and profits of lands, and the produce and profits of other property which may be the subject-matter of proceedings in the court, who is called a *receiver*: this officer has also to manage and take care of such lands and property during the pending of the suit, and he is appointed by the court in cases where it is doubtful to what party the property will ultimately belong; or where a party from incapacity, such as infancy, &c. is incapacitated from receiving the profits of or managing the estate.—*Cowel*; *Gray's Ch. Pract.* 143.

RECEIVER IN CHANCERY. See tit. *Receiver*.

RECEIVER OF THE FINES. See tit. *Receiver*.

RECEIVER GENERAL OF THE DUCHY OF LANCASTER. See tit. *Receiver*.

RECEIVERS AND TRIERS OF PETITIONS. The mode of receiving and trying petitions to parliament was formerly judicial rather than legislative; and the triers were committees of prelates, peers and judges; but their functions have long given way to the authority of parliament at large. By the House of Lords, however, receivers and triers of petitions are still appointed at the opening of every session, as in ancient times. But petitions are, by both houses, considered now in the first instance, and only referred to triers or committees in certain cases.

RECITAL (*recitatio*). The formal statement or setting forth of some matter of fact in any deed or writing, in order to explain the reasons upon which the transaction is founded. The recitals are situated in the *premises* of a deed; that is, in that part of a deed between the date and the *habendum*; and they usually commence with the formal word "*whereas*."—4 *Cruise*; 2 *Bl.* 298.

RECITE, *To*. To state or set forth in any deed or other writing such matters of fact as may be necessary to explain the nature of the transaction, or the reasons upon which it is founded. As used in the practice of conveyancing it is somewhat analogous to the word *induce*, as used in

the practice of pleading. See also tit. *Recital.*

RECOGNITIONE ADNULLANDA PER VIM ET DURITIEM FACTA. A writ which lay to the justices of the Common Pleas for the sending of a record touching a *recognisance*, which the *recognisor* suggested to have been *acknowledged by force and duress*, in order that if such were the case it might be *annulled*. — *Cowel*; *Reg. Orig.* 183.

RECOGNITORS (*recognitores*). A word which was frequently used to signify a jury impaneled upon an assize; so called because they *acknowledge* a disseisin by their verdict.— *Cowel*; *Bract. lib.* 5, *tract* 2, *c.* 9.

RECOGNIZANCE (*recognitio*). A recognizance is an acknowledgment upon record of a former debt: and he who so acknowledges such debt to be due is termed the *recognisor*, or *cognisor*; and he to whom, or for whose benefit he makes such acknowledgment, is termed the *recognisee*, or *cognisee*. A recognizance is in most respects similar to a bond; the difference being chiefly, that a bond is the creation of a new debt; whereas a recognizance is merely an acknowledgment upon record of a debt which was previously due. The form of a recognizance runs thus:— "That A. B. doth *acknowledge* to owe to C. D. the sum of £100;" and it also contains a condition to be void on performance of the thing stipulated. It is certified to and witnessed by an officer of some court, and not by the seal of a party, as in the case of deeds strictly so called.— 4 *Cruise*, 103; 2 *Bl.* 160.

RECOGNIZEE. See tit. *Recognizance.*

RECOGNIZOR. See tit. *Recognizance.*

RECORD (*recordium*). An authentic testimony in writing contained in rolls of parchment, and preserved in courts of record. The record of *nisi prius* is an official transcript or copy of the proceedings in an action entered on parchment and sealed and *passed* as it is termed, at the proper office; it serves as a warrant to the judge to try the cause, and is the only document at which he can judicially look for information as to the nature of the proceedings, and the issues joined between the parties. For a more particular description of the *nisi prius record* the reader is referred to an account of it as given in the outline of an action at law at the end of the volume.—*Stephen on Pleading*, 26; *Cowel.* See also tit. *Matter of Record.*

RECORD, *Courts of.* Courts whose acts and judicial proceedings are enrolled in parchment, called the records of such courts, and are so preserved as a perpetual memorial and testimony thereof. All courts of record are the king's courts in right of his crown and dignity, and they usually possess, as incident to them, the power to fine and imprison. Several of the king's courts, however, are not courts of record; as the courts of equity and the admiralty courts. The distinction between courts of record, and not of record, was introduced soon after the Conquest; for by an edict of the Conqueror's it was ordained that all proceedings in the king's courts should be carried on in the Norman instead of the English language, in consequence of which the influence of the county courts, courts baron, and other inferior jurisdictions, was much narrowed; for as the judges and suitors of such courts were ignorant of that language, they were prohibited from recording their acts.—3 *Ch. Bl. Com.* 24; 1 *Sid.* 145; *Com. Dig. tit. Chancery*; *Cromp. Jur.* One of the privileges which attaches

to a court being a court of record, is the high authority which their records are allowed to possess, their truth not being permitted to be called in question; it being an almost invariable rule that nothing shall be averred against a record, and that no plea, or even proof, be admitted to the contrary.

RECORD, *Trial by.* A species of trial adopted for the purpose of ascertaining the existence or non-existence of a record. When a record is asserted by one party to exist, and the opposite party denies its existence under the form of traverse, that *there is no such record* remaining in court as alleged, and issue be joined thereon, this is called an issue of *nul-tiel record;* and in such case the court awards a trial by *inspection and examination of the record.* Upon this the party affirming its existence is bound to produce it in court on a day given for the purpose; and if he fail to do so, judgment is given for his adversary. This mode of trial is not only that specially appropriated to try an issue of the above kind, but is in fact the only legitimate mode of trying such an issue.—*Step. on Pl.* 112, *ed. 4th;* 3 *Bl.* 330; *Co. Lit.* 117 (*b*), 260 (*a*).

RECORDARI FACIAS LOQUELAM. An original writ directed to the sheriff to remove a cause pending in an inferior court to one of the superior courts; as from a county court or court baron to the Court of King's Bench or Common Pleas. It seems to be called a *recordari* from the circumstance of its commanding the sheriff to whom it is directed *to make a record* of the proceedings in the court below, and then to send it up to the superior court.—*Reg. Orig.; Cowel;* 2 *Arch. Pract.* 830.

RECORDER (*recordator*). A barrister or other person learned in the law, whom the mayor or other magistrate of any city or corporate town (having a jurisdiction or a court of record within his precincts) doth by the king's grant associate to him for his better direction in the judicial proceedings of such court.—*Cowel.*

RECOVERY (*recuperatio*). A recovery in its most extensive sense, is the restoration of a former right, by the solemn judgment of a court of justice. A common recovery was one of the modes of transferring property from one party to another, and is said to have been introduced by the ecclesiastics, in order to avoid the statutes of mortmain, by which they were prohibited from purchasing, or receiving under pretence of a free gift, any lands or tenements whatever.

To effect this purpose, the religious houses used to set up a fictitious title to the lands intended to be given or sold, and brought an action against the tenant to recover them; the tenant, by collusion, made no defence, whereby judgment was given for the religious house, which then recovered the lands by sentence of law, upon a supposed prior title. The notoriety and evidence which attended these feigned recoveries was such, that they were soon adopted by lay persons in general, as a common mode of transferring lands, and have continued in use until they were abolished by a late act of parliament. In order to explain the nature of a recovery, the manner in which a recovery was *suffered* (as it was termed) will be here given.

The first thing necessary to be done in suffering a recovery was, that the person who was to be the demandant, and to whom the lands were to be adjudged, should sue out a writ or *præcipe* against the tenant of the freehold; whence such tenant was usually called the *tenant to the præcipe.* In obedience to this writ,

the tenant appeared in court either in person or by his attorney; but, instead of defending the title of the land himself, he called upon some other person, who upon the original purchase was supposed to have warranted the title, and prayed that that person might be called in to defend the title which he warranted, or otherwise to give the tenant lands of equal value to those which he should lose by defect of his warranty; and this was called the *voucher* (*vocatio*), or calling to warranty. The person who was thus called to warrant (and who was usually called the *vouchee*), appeared in court, was sued and entered into the warranty, by which means he took upon himself the defence of the land. The demandant then desired leave of the court to imparl, or confer with the vouchee in private, which was granted of course. Soon after the demandant returned into court, but the vouchee disappeared or made default; in consequence of which it was presumed by the court that he had no title to the lands demanded in the writ, and therefore could not defend them, whereupon judgment was given for the demandant (who was then called the *recoveror*) to recover the lands in question against the tenant, and for the tenant to recover against the vouchee lands of equal value, in recompense for those so warranted by him, and which had been lost by his default. —5 *Cruise*, 223, 284, 285, 286.

RECOUPE (from the Fr. *recouper*, to cut again, &c.) To keep back that which is due; to make default, &c. Thus, if a man had ten pounds issuing out of certain lands, and he disseised the tenant of the land; in an assize brought by the disseisee, the disseisor might recoupe the rent in the damages.—*Cowel.*

RECREANT. See tit. *Craven.*

RECTATUS. See tit. *Arrectatus.*

RECTO (*right*). See tit. *Writ of Right.*

RECTO DE ADVOCATIONE ECCLESIÆ. A writ of right, which lay when a man had *right of advowson*, and the parson of the church dying, a stranger presented his clerk to the church, and the real patron did not bring his action of *quare impedit* or *darrein presentment* within six months, but permitted the stranger to usurp on him. This writ lay only where the patron was entitled to the *fee* in the advowson.—*Reg. Orig.* 29; *Cowel.*

RECTO DE CUSTODIA TERRÆ ET HÆREDIS. A writ that lay for him, whose tenant who held of him in chivalry died in nonage, against a stranger who entered upon the land, and took away the body of the heir.—*Reg. Orig.* 161; *Cowel.*

RECTO DE DOTE. A writ of right of dower, which lies for a woman who has received part of her dower, and purposes demanding the remainder, against the heir of her husband, or his guardian, if he be a ward.—*Old Nat. Brev.* 5; *Cowel.*

RECTO DE DOTE UNDE NIHIL HABET. A writ of right of dower, which lies when a man who has divers lands and tenements has assigned no dower to his wife, and she is thereby driven to sue for her thirds against the heir or his guardian.—*Reg. Orig.* 170; *Cowel.*

RECTO DE RATIONABILI PARTE. A writ that lay between privies in blood, as brothers in *gavelkind*, or sisters or other co-parceners, for land in fee-simple. As for instance, if a man lease his land for life, and afterwards dies, leaving issue two daughters, and after that, the tenant for life

dies also, and then one sister enters upon the whole of the land, and so deforces the other, then the sister so deforced might have this writ to recover part.—*F. N. B.* 9; *Cowel.*

RECTO QUANDO DOMINUS REMISIT. A writ of right, which lay where lands or tenements that were in the seignory of any lord were in demand by a writ of right; for if in such case the lord held no court, or otherwise, at the prayer of the demandant, sent to the king's court his writ, to put the cause thither for that time (reserving to him at other times the right of his seignory), then this writ issued out for the other party.—*Reg. Orig.* 4; *Cowel.*

RECTO SUR DISCLAIMER. A writ that lay for a lord, who having avowed upon his tenant in the Court of Common Pleas, and such tenant had disclaimed to hold of him: on which *disclaimer* the lord might have this writ; and if he averred and proved that the land was holden of him, he should recover the land for ever.—*Old Nat. Brev.* 150; *Cowel.*

RECTOR. A governor. *Rector ecclesiæ parochialis* is he who has the cure or charge of a parish church, *qui tantum jus in ecclesia parochiali habet quantum prælatus in ecclesia collegiata.* It appears that when dioceses were divided into parishes, the clergy, who had the charge in those places, were called *rectors:* afterwards, when their rectories were appropriated to monasteries, &c., the monks kept the great tithes; but the bishops were to take care that the rector's place should be supplied by another, to whom he was to allow the small tithes for his maintenance; and this was the *vicar.*—*Mar. L. Dict.*

RECTORY (*rectoria*). This word appears to be used for an entire parish church, with all its rights, glebes, tithes, and other profits.—*Spelm.* The word *rectoria* was often used to signify the rector's manse or parsonage house.—*Ken. Par. Antiq.* 549.

RECUSANTS. This word, as used in the statutes, has been expounded to mean all those who separate from the church as established by the laws of this realm.—*Les Termes de la Ley.*

REDDENDUM. The reddendum is a clause in a deed by which the grantor reserves something to himself out of what he had granted before. It is situated between the *habendum* and the *covenants* in deeds; and usually begins either with the word "*yielding,*" or the word "*rendering:*" thus in a lease, that clause which commences with the words "*yielding and paying*" is the reddendum.—4 *Cruise,* 26; 2 *Bl.* 299.

REDDIDIT SE (*he hath rendered himself*). These words are applied to a person who *renders himself* in discharge of his bail.—2 *Lill. Abr.* 430.

REDDITION (*redditio*). A judicial confession and acknowledgment that the land or thing in demand belongs to the demandant, and not to the person surrendering.—34 & 35 *H.* 8, *c.* 24; *Cowel.*

REDDITUS ASSISUS. See tit. *Rents of Assize.*

REDDITUS SICCUS (*dry rent, barren rent*). A rent, for the recovery of which no power of distress is given, either by the rules of the common law, or the agreement of the parties.—3 *Cru. Dig.* 314. It is also sometimes called *rent-sec.*—*Lit. sec.* 217, 218. See also *Co. Lit.* 143 *a*, 143 *b*, 153 *a*, *n.* (1).

REDEEMABLE RIGHTS. Such rights as return to the conveyor or

disposer of land, &c. on payment of the sum for which such rights were granted.—*Jacob; Tomlins.*

RE-DEMISE. See tit. *Demise and Re-demise.*

REDEMPTION, *Equity of.* See tit. *Equity of Redemption.*

REDISSEISIN (*redisseisina*). A disseisin made by a person who had once before been adjudged to have *disseised* the same man of his lands or tenements; for which there lay a special writ, termed a *writ of disseisin.* —*Reg. Orig.* 206; *Cowel.*

REDUBBORS or ADUBBORS. Those were so termed who bought stolen cloth knowing it to be such, and changed it into some other form or colour in order to disguise it.—*Cowel.*

RE-ENTRY (from the Fr. *rentrer*, to enter into again). The entering into or resuming possession of premises. Thus in leases there is a proviso for *re-entry* of the lessor on the tenant not paying the rent, or not performing the covenants contained in the lease; and by virtue of such proviso the lessor may take the premises into his own hands again if the rent be not paid, or the covenants be not observed by the lessee; and this taking possession again is termed *re-entry.*—2 *Cruise*, 8; *Cowel.*

RE-EXCHANGE. The like sum of money payable by the drawer of a bill of exchange, which is returned protested back again to the place whence it was drawn, for the exchange of the sum mentioned in the bill.—*Lex Mercat.* 98.

RE-EXTENT. A second *extent* made on lands and tenements on complaint being made that the former *extent* was partially performed. —*Cowel.*

RE. FA. LO. The abbreviation of *recordari facias loquelam*, which will be found under that title.

REFERENCE. The fact of something being *referred.* Thus in the proceedings in a suit in equity, or in an action at law, matters frequently arise which would take up too much of the time of the court to be brought before it for its decision; and such matters are therefore referred to the masters of the respective courts to be inquired into. The order of the court authorizing such a reference is termed an *order of reference*, and the reference itself is usually called a *reference before the master.*—2 *Arch. Pract.* 742; *Grant's Ch. Pr.* See also tit. *Referring a Cause.*

REFERRING A CAUSE. When a cause or action involves matters of account, or other intricate details which require minute examination, and for that reason are not fit to be brought before a jury, it is not unusual to refer all matters in difference between the parties to the decision of an arbitrator, and in such a case the cause is said *to be referred.*

REFRESHER. It frequently happens that after the briefs in a cause have been delivered to counsel, the cause, from a press of business or some other reason, is adjourned or allowed to stand over from one term or sittings to another, which imposes upon counsel the necessity of re-perusing their briefs, in order to *refresh* their memory upon the various points of the cause; in consideration of which it is usual for the attorney to mark a small additional fee, thence termed a *refresher*, or a *refresher* fee, upon the briefs which have been so delivered.

REFUTANTIA (*refutatio*). An

acquittance or acknowledgment of renouncing all future claim.—*Cowel.*

REGAL FISHES. See tit. *Fish Royal.*

REGALIA. The royal rights of a king; the king's prerogative; and *regalia facere* is to do homage or fealty when he is invested with the *regalia.* —*Cowel.*

REGARD, *Court of.* A court which belonged to the forest, holden every third year for the lawing or expeditation of mastiffs, which was done by cutting off the claws of the forefeet, to prevent them from chasing the deer.—*Manwood, part* 2, *c.* 7, *num.* 4; *Cowel.*

REGARDANT (Fr. looking at, vigilant). Thus, a *villain regardant* was called *regardant* to the manor, because he was charged with doing all base services within the same, and with seeing that the same was freed from all things that might annoy it. —*Co. Litt.* 120; *Cowel.*

REGARDER (*regardator*). An officer of the forest, who had the supervision of all other officers thereof; and whose duties were intimately connected with the *court of regard.*—*Manwood,* 188 *et seq.*; *Cowel.*

REGE INCONSULTO. A writ issued from the king to the judges, commanding them not to proceed in a cause which may prejudice the king without the king being advised.—18 *Vin. Abr.* 275, 280.

REGIO ASSENSU. A writ by which the king gives his royal assent to the election of a bishop.—*Reg. Orig.* 294; *Cowel.*

REGISTER (*registarius*). A book wherein things are registered for the preservation of the same: thus a parish register is that book wherein the baptisms, marriages and burials are registered in the respective parishes: there is also a book wherein are entered the various forms of original and judicial writs, which is termed the *register of writs.*—*Co. Lit.* 159; *Cowel;* see also the two following articles.

REGISTRAR (*registrarius*). An officer who has the custody or keeping of a *registry.* He is sometimes, though improperly, called a register. There are several officers of this kind connected with the law. The principal are the registrars of the Courts of Chancery and Bankruptcy, and the registrars of births, deaths, and marriages. The registrar of the Court of Chancery is an officer with whom, in certain cases, the defendants are compelled to enter their appearances; and by him the decrees of the court are drawn up, signed and passed.—2 *Dan. Ch. Pr.* 13, 670. As to the duties of the registrars of the Court of Bankruptcy, the reader is referred to 5 & 6 Vict. c. 122, ss. 73, 74, 75 et seq. The registrars of births, deaths, and marriages, are officers appointed under the 6 & 7 Will. 4, c. 86, 7 Will. 4 & 1 Vict. c. 22, and 3 & 4 Vict. c. 92, for the purpose of keeping in their respective districts an exact register of every birth, death and marriage, which may take place therein. The registrars of each union are subjected to the supervision of their "superintendant registrar," and these again are subject to the authority of a superior officer appointed under the great seal, and holding office during the pleasure of the crown, called the "Registrar General of Births, Deaths and Marriages in England." See the statutes above referred to.

REGISTRY (*registrum*). A repository or place for the keeping of registers or public documents.—*Cowel.*

Registry of Deeds. By certain acts of parliament all deeds and conveyances (with some exceptions) which affect lands in the counties of Middlesex and York, are required to be registered: that is, an abstract of their substance is required to be entered in a register kept for that purpose. The object of this is, that purchasers of lands in these counties by referring to this register may have an opportunity of ascertaining whether the lands they are about to purchase are in any way incumbered or otherwise affected by any prior transactions; and therefore by these statutes deeds and conveyances are void against *subsequent* purchasers or mortgagees, unless registered *before* the conveyances under which such purchasers or mortgagees claim. — 2 *Chitty's Bl.* 343, *note* 73.

Regrating (from *re*, again, and the Fr. *grater*, to scrape). In one sense this word signifies the scraping or dressing of cloth or other goods for the purpose of selling them again. But in its more ordinary sense it means the buying or getting into one's hands at a fair or market any provisions, corn, or other dead victual, with the intention of selling the same again in the same fair or market, or in some other within four miles thereof, at a higher price: and he who commits this offence is termed a *regrator*. — 3 *Inst.* 195; 5 *Edw.* 6, *c.* 14.

Regrator. He who commits the offence of *regrating*. — See tit. *Regrating*.

Re-hearing. When a party seeks to have a decree of the Court of Chancery reversed or altered he may petition for a *re-hearing*; that is, for the cause to be heard again.— *Gray's Chan. Pract.* 206; 3 *Bl.* 453.

Reif (Sax. *reaf*, rapine, &c.) Robbery.—*Cowel.*

Rejoinder (*rejunctio*). See tit. *Rebutter*.

Rejoining Gratis. Rejoining voluntarily, or without being required to do so by a rule to rejoin. It would seem that when a defendant is under terms to *rejoin gratis*, it means that he must deliver a rejoinder, without putting the plaintiff to the necessity of obtaining a rule to rejoin.—*Adkins* v. *Anderson*, 10 *Mee. & W.* 12; *Maurice* v. *Engier, Barnes*, 271; *Lush's Pr.* 396.

Relator. A rehearser or teller. It is sometimes used to signify an *informer*; as in the case of an information being filed by the Attorney-General at the *relation* of some informant, such informer is termed the *relator*.—3 *Bl.* 264; 4 *Bl.* 308.

Release (*relaxatio*). A release is a discharge or conveyance of a man's right in lands or tenements to another who already has an estate in possession: as if A. has a lease of lands for a term of years, and B. has the remainder in fee; here the fee-simple of the lands may become vested in A. by B. executing a *release* of them to A.—4 *Cruise*, 84; 2 *Bl.* 324.

Release to Uses. The conveyance of lands by deed of *release* to one party, to the *use* of another, is so termed. Thus, when a conveyance of lands was effected, by those instruments of assurance termed a lease and release, from A. to B. and his heirs, *to the use* of C. and his heirs, in such case C. at once took the whole fee-simple in such lands; B., by the operation of the statute of uses, being made a mere conduit pipe for conveying the estate to C.—4 *Cru. Dig.* 144, *3d ed.*; *William's Principles*, 139; 2 *Sand. on Uses*, 64, 77, *5th ed.*

RELEGATION (*relegatio*). A temporary banishment. — *Co. Lit.* 133; *Cowel.*

RELICTA VERIFICATIONE (*the plea being relinquished*). When a *cognovit actionem* is given after plea pleaded, and in consequence thereof the plea is withdrawn, such a *cognovit* is called a *cognovit actionem relicta verificatione.*—2 *Arch. Pract.* 711, 715.

RELIEF (*relevamen*). A fine or acknowledgment, which, during the feodal system, the heir paid to the lord on being admitted to the feud which his ancestor possessed: it generally consisted of houses, arms, money, and the like; it was called a relief, because it raised up and re-established the inheritance, or in the words of the feodal writers, "*incertam et caducam hereditatem relevabat.* — 2 *Bl.* 56; *Wright*, 14.

REM, *In.* See tit. *In Personam.*

REMAINDER (*remanentia*). A remainder is defined to be an estate limited to take effect and be enjoyed after another estate is determined. As if a man who is seised of lands in fee-simple grants them to A. for twenty years, and after the determination of that term, to B. and his heirs for ever; in this case the estate of A. (that is, the interest which A. has in the lands for the twenty years) is termed an estate for years: and the estate of B. (that is, the interest which B. has in the lands after the end of the twenty years) is termed a *remainder.* In order to constitute or to create a *remainder*, it is a rule that there must be some *particular estate* (as it is termed) to support it; that is, at the time of creating a remainder there must be some estate (in the same lands to which the remainder applies) created at the same time to precede the remainder; which preceding estate is termed the *particular estate.* Thus, in the above instance (of a man who is seised of lands in fee-simple, granting them to A. for twenty years, and after the determination of that term to B. and his heirs for ever), the estate of A. is termed the *particular estate*, because it is only a small part, or *particula* of the inheritance, the residue or remainder of which is granted over to B. The necessity of creating this preceding particular estate, in order to make a good remainder, arises from this plain reason, that the word *remainder* is a relative expression, and implies that some part of the thing is previously disposed of; for where the *whole* is conveyed at once, there cannot possibly exist a *remainder.* Remainders are said to be either *vested* or *contingent.* Vested remainders (or remainders executed) are those on the creation of which a *present* interest passes to the party, though to be enjoyed in *future*, and by which the estate is invariably fixed to remain to a determinate person after the particular estate is spent. As if an estate is conveyed to A. for twenty years, remainder to B. in fee; here B.'s is a *vested* remainder, which nothing can defeat or set aside; so that a person entitled to a *vested* remainder has an *immediate* fixed right of *future* enjoyment, that is, an estate *in præsenti*, though it is only to take effect in possession and receipt of the profits at a *future* period. *Contingent* (or executory) remainders are such as are limited to take effect either to a dubious and uncertain *person*, or upon a dubious and uncertain *event*; as if an estate is conveyed to A. for life, with remainder to B.'s eldest son (then unborn) in tail; this is a *contingent* remainder, for it is quite uncertain whether B. will have a son or not; but the instant that a son is born, the remainder is no longer contingent, but vested.—2 *Cruise*, 237; 2 *Bl.* 164.

REMAINDER, *Formedon in.* See tit. *Formedon.*

REMANET. A remnant, that which remains. Thus the causes which are deferred being tried from one term to another, or from one sittings to another, are termed *remanets.*—1 *Arch. Pract.* 353.

REMEMBRANCERS (*rememoratores*). Were three officers or clerks of the Exchequer, who were formerly called clerks of the *remembrance.* One was called the *king's remembrancer*, the second the *lord treasurer's remembrancer*; and the third the *remembrancer of the first fruits.* The king's remembrancer entered in his office all recognizances taken before the barons for any of the king's debts, or for appearances, or for observing of orders; he wrote process against the collectors of customs, subsidies, and fifteenths for the accounts, &c. The *lord treasurer's remembrancer* made process against all sheriffs, escheators, receivers, and bailiffs, for their account; also of *fieri facias* and *extent* for any debts due to the king, either in the pipe or with the auditors, &c. The *remembrancer of the first fruits* took all compositions and bonds for first fruits and tenths, and made process against such as did not pay the same.—*Cowel.*

REMISSION. The king's pardon. —4 *Bl.* 316.

REMITTER (*remittere*, to send back). A restitution of one who has two titles to lands or tenements, and is seised of them in respect of his latter title, which proving defective, he is restored or sent back to his former or more ancient title.—*F. N. B.* 149.

REMITTITUR (*it is remitted*). This word is ordinarily used in two senses; 1st, for an entry or minute which a plaintiff sometimes makes expressive of his intention to give up or waive the damages which he has originally demanded in his declaration; 2ndly, to signify the returning or sending back by a court of appeal the record and proceedings to the court whence the appeal came. A common instance of the first description of *remittitur* is afforded in an action of replevin, wherein the defendant, having pleaded and established an avowry, cognizance, or justification, is entitled to damages; but as that action is generally brought merely to establish a right, the defendant often excuses or *remits* the payment of those damages to which he would be otherwise entitled, and when he does so, it is thus recorded in the judgment: "and hereupon the said C. D. freely here in court *remits* to the said A. B. his damages aforesaid; therefore let the said A. B. be acquitted thereof." The second sort of remittitur is used when, for instance, the House of Lords having affirmed the judgment on a writ of error from the Queen's Bench, returns or *remits* the record, so that that court may carry its sentence (so confirmed) into execution. The form is thus entered in the judgment: "Thereupon the record aforesaid and also the proceedings aforesaid in the same court of parliament had in the premises, are *remitted* by the same court of parliament to the court of our said Lady the Queen, before the queen herself, wheresoever &c. to the end that execution may be done thereupon, &c." —*Tidd's Forms*, 574, 615, *&c.*

REMITTITUR DAMNA. See tit. *Remittitur.*

REMOVER. The removing of a suit or cause from one court into another.—*Cunningham.*

RENDER (from the Fr. *rendre*, to return). To give up, to yield, to

surrender. Thus, when a defendant who has been arrested, and has obtained his liberty, by procuring *bail*, yields himself up again into custody, in order that the bail may be discharged from their obligation and liability, he is said to *render* himself in discharge of his bail.—1 *Arch. Pract.* 615.

RENOUNCING PROBATE. Refusing to take upon oneself the office of executor or executrix. Refusing to take out probate under a will wherein one has been appointed executor or executrix.—1 *Wms. Exec.* 160; see *Barker* v. *Railton*, 6 *Jur.* 549.

RENOVANT (from *renovare*, to renew). Renewable. It is thus used, —"The parson sued one for tithes, to be paid of things *renovant*," &c.—*Cowel.*

RENT (*redditus*). Defined to be an annual return made by the tenant to the landlord, either in labour, money, or provisions, in consideration of the lands or tenements which such tenant holds of his landlord; from which it follows, that though rent must be a profit, yet there is no occasion that it should consist of money. There are three kinds of rents, *viz.* rent-service, rent-charge, and rent-seck. *Rent-service* consisted of fealty and a certain rent, and this was the only kind of rent originally known to the common law; it was called rent *service*, because it was given as a compensation for the services to which the land was originally liable. When a rent was granted out of lands by deed, the grantee had not power to distrain for it, because there was no fealty annexed to such a grant. To remedy this inconvenience, an express power of distress was inserted in the grant, in consequence of which it was called a *rent-charge*, because the lands were *charged* with a distress for the recovery of the rent. *Rent-seck*, or *barren-rent*, is nothing more than a rent for recovery of which no power of distress is given either by the rules of the common law or the agreement of the parties.—3 *Cruise*, 312, 313, 314; 2 *Bl.* 42; *Gilb. Rent*, 19.

RENT AUDIT. The annual, half-yearly, or quarterly meetings held by a landlord, or his steward or agent, for the purpose of receiving the rents of the tenants and auditing their accounts, is frequently so termed.

RENTAL (said to be corrupted from *rent roll*). A roll on which the *rents* of a manor are registered or set down, and by which the lord's bailiff collects the same. It contains the lands and tenements let to each tenant, the names of the tenants, and other particulars connected therewith.—*Cunningham.*

RENT ROLL. See tit. *Rental.*

RENTS OF ASSISE (*redditus assisæ*). The certain and determined rents of the freeholders and ancient copyholders of manors are called *rents of assise*; so called because they were *assised*, or made certain, and so distinguished from *redditus mobilis*, which was a variable or fluctuating rent.—3 *Cruise*, 314.

RENTS RESOLUTE (*redditus resoluti*). Such rents or tenths as were anciently payable to the crown, from the lands of abbies and religious houses, and were accounted among the *fee farm* rents to be sold by the stat. 22 Car. 2, cap. 6.—*Cowel.*

RENUNCIATION OF PROBATE. See tit. *Renouncing Probate.*

REPARATIONE FACIENDA. A writ which lay in various cases; as if, for instance, there were three tenants in common, joint tenants, or

pro indiviso of a mill or house which had fallen into decay, and one of the three was willing to repair it, and the other two not; in such case the party who was willing to repair it might have this writ against the other two.—*Reg. Orig.* 153; *Cowel.*

REPETUNDARUM CRIMEN. The crime of receiving a bribe to prevent justice.—*Tomlins.*

REPLEADER (*replacitare*). To plead again. When after issue has been joined in an action, and a verdict given thereon, the pleading is found (on examination) to have miscarried, and failed to effect its proper object, viz. of raising an apt and material question between the parties, the court will on motion of the unsuccessful party, award a *repleader*, that is, will order the parties to plead *de novo*, for the purpose of obtaining a better issue. For example, if in an action of debt on bond, conditioned for the payment of ten pounds ten shillings at a certain day, the defendant pleads payment of *ten pounds*, according to the form of the condition, and the plaintiff instead of demurring, tenders issue upon such payment; it is plain that whether this issue be found for the plaintiff or the defendant, it will remain equally uncertain whether the plaintiff is entitled or not to maintain his action; for in an action for the penalty of a bond, conditioned to pay a certain sum, the only *material* question is whether the exact sum were paid or not, and repayment in part is a question quite beside the legal merits.—*Stephen on Pleading*, 108, 109; 2 *Arch. Pract.* 1156.

REPLEGIARE. To redeem a thing detained or taken by another, by putting in legal sureties.—*Cowel.*

REPLEGIARE DE AVIARIIS. A writ brought by a person whose cattle are distrained, or put in the pound, by another for some cause, upon surety given to the sheriff to prosecute or answer the action in law.—*F. N. B.* 68; *Cowel.*

REPLEVIABLE. Capable of being replevied. Property is said to be *repleviable* or *replevisable*, when proceedings in replevin may be resorted to for the purpose of trying the right to such property. Thus goods taken under a distress are *repleviable*, for the validity of the taking may be tried in an action of replevin; but goods delivered to a carrier and unjustly detained, are *not* repleviable, for the unjust detention of goods delivered on a contract is not an injury to which the action of replevin applies, but forms the ground of an action of detinue or of trover. See *Galloway* v. *Bird*, 4 *Bing.* 299; 12 *Moore*, 547.

REPLEVIN (*plevina*, from *replegiare*, to deliver to the owner upon pledges). A personal action adapted to try the validity of a distress, or to recover the possession of goods unlawfully taken.—*Com. Dig. Replevin.* Where goods have been distrained, and the tenant thinks the distress unlawful, and wishes to contest its validity, the action of replevin is the appropriate remedy to resort to for the purpose. The mode adopted is by the aggrieved party making *plaint* (i. e. complaint) to the sheriff, and his goods are thereupon replevied, that is, delivered to him upon giving security to prosecute an action against the distrainor for the purpose of trying the legality of the distress; and if upon such trial, the right be determined in favour of the latter, then the goods are returned. In form it is an action for *damages* for the illegal taking and detaining of the goods and chattels.—*Com. Dig. tit. Replevin*; *Steph. Pl.* 20; 2 *Arch. Pr.* 826; 3 *Bl.* 147; *Woodfall's Land. and Ten. lib.* 3, *c.* 6, *s.* 1.

REPLEVISABLE. See tit. *Repleviable.*

REPLEVISH. To let one to *mainprise;* that is, to let one out of custody, upon security given that he shall be forthcoming at a time and place assigned.—*Cowel.* See also tit. *Mainprise.*

REPLEVY. This word, as used in reference to the action of *replevin,* signifies to *re-deliver* goods which have been distrained, to the original possessor of them, on his pledging or giving security to prosecute an action against the distrainor for the purpose of trying the legality of the distress. It has also been used to signify the bailing or liberating a man from prison, on his finding bail to answer for his forthcoming at a future time. See tit. *Replevin,* and tit. *Homine Replegiando.*

REPLICATION (*replicatio*). A *reply* made by the plaintiff, in an action, to the defendant's plea; or in a suit in chancery is the complainant's *reply* to the defendant's answer. See also tit. *Rebutter,* and tit. *Answer.*

REPORT, *Master's.* See tit. *Master in Chancery.*

REPORT OF COMMITTEE. The report of a parliamentary committee is that communication which the chairman makes to the house at the close of the investigation upon which it has been engaged; and is usually in the form of a series of resolutions. In the House of Commons he appears at the bar shortly after the speaker has taken the chair, and on being called upon reads his report, brings it up, and it is received by a vote of the house.

REPORTS. The published periodical volumes, which contain the various cases argued and determined in the several courts of law and equity are so termed.

REPOSITION OF THE FOREST (*repositio forestæ*). An act by which certain forest grounds being made *purlieu* upon view, were by a second view laid to the forest again.—*Cowel.*

REPRESENTATION and REPRESENTATIVE. Representation is the act of one person *representing* or standing in the place of another; and he who so *represents* or stands in the place of another is termed his *representative.* Thus, an heir is the *representative* of the ancestor; and an executor is the *representative* of the testator; the heir standing in the place of his deceased ancestor, with respect to his *realty;* the executor standing in the place of his deceased testator with respect to his *personalty;* and hence, the heir is frequently denominated the *real representative,* and the executor, the *personal representative.*

REPRESENTATIVE PEERS. The representative peers are those who at the commencement of every new parliament are elected to represent Scotland and Ireland in the British House of Lords; namely, sixteen for the former, and twenty-eight for the latter country. At the union of Scotland with England in 1707, and of Ireland in 1801, the peers of those two countries were not admitted to seats in the British parliament, but were allowed to elect a certain number of their body to represent them therein; hence the term representative peers. The Scottish representative peers must have descended from ancestors who were peers at the time of the union.

REPRESENTATIVES. See tit. *Representation.*

REPRIEVE (from the Fr. *reprendre,*

to take back). The withdrawing or suspending for a time sentence of execution against a prisoner.—4 *Bl.* 394; *Les Termes de la Ley.*

REPRISAL. See tit. *Recaption.*

REPRISES (from the Fr. *reprendre*, to take back). Deductions and duties which are annually paid out of manors or lands; as a *rent-charge*, *rent-seck*, *pensions*, *corrodies*, *annuities*, &c.; so that when the clear annual value of a manor is spoken of, it is said to be so much per annum ultra *reprisas*, that is, besides all *reprises.*—*Cowel.*

REPUBLICATION OF WILL. To publish it again. See tit. *Publish.*

REPUTED, REPUTATION (*reputatio*). The general, vulgar, or public opinion respecting anything. Thus land may be reputed part of a manor, though not really so, and a certain district may be *reputed* a parish, or be a parish in *reputation*, although in reality no parish at all.—2 *Lill. Abr.* 464. See also the following titles.

REPUTED MANOR. See tit. *Manor.*

REPUTED OWNER. See tit. *Reputed Ownership.*

REPUTED OWNERSHIP. He who has the general credit or reputation of being the owner or proprietor of goods, is said to have the reputed ownership in them, or to be the reputed owner thereof.

REQUEST, *Letters of.* See tit. *Letters of Request.*

REQUESTS. See tit. *Conscience, Courts of.*

RERE COUNTY. See tit. *Rier County.*

RESCEIT (*receptio*). The admission or receiving of a third person to plead his right in a cause formerly commenced by two others; as when an action is brought against a tenant for life or term of years, and he who is entitled to the reversion comes in and prays to be permitted to defend the land and plead with the demandant. This word is also applied to the admittance of a plea though the controversy be only between two persons.—*Cowel; Les Termes de la Ley.*

RESCEIT OF HOMAGE (*receptio homagii*). The lord's receiving homage of his tenant on his admission to the land.—*Kitchin*, 148; *Cowel.*

RESCOUS or RESCUE (*rescussus*, Fr. *recouse*, rescue). A resistance against lawful authority. As for instance, the taking back by force goods which have been taken under a *distress*; or the violently taking away a man who is under *arrest*, and setting him at liberty or otherwise procuring his escape, are both so denominated; and for which writs of *rescous* lie against such offenders, offending parties or *rescussors* as they are termed.—*Co. Lit. lib.* 2, *cap.* 12; 3 *Bl.* 146; *Parrett Navigation Company* v. *Stower*, 6 *Mee. & W.* 564.

RESEISER (*reseisere*). The taking again of lands into the hands of the king of which a general livery or *ouster le main* was formerly mis-sued contrary to the form and order of law.—*Staundf. Prærog.*

RESERVATION (*reservatio*). A *reserving* or keeping back of something out of that which is granted; as, for instance, when a man grants a lease of lands to another, he *reserves* to himself a yearly rent in respect of those lands, which is thence termed a *reservation.* So also an *exception* is sometimes termed a *reservation;* as,

for instance, when a man grants the lease of a house and *reserves* to himself one room therein; this is a *reservation* of that room, and also an *exception* out of the demise. — *Les Termes de la Ley; Cowel.*

RESIANCE (*resiantia*). A man's residence, abode, or continuance in a place, whence comes the word *resiant*, that is, continually dwelling or abiding in a place.—*Kitchin*, 33; *Cowel.*

RESIANT ROLLS. The rolls containing *resiants* in a tithing, &c. which are to be called over by the steward on holding courts leet. — *Comp. Court Keep.* See also tit. *Resiance.*

RESIDUARY. The remaining portion or residue. Thus *residuary* estate or property signifies the remaining part of a testator's estate and effects after payment of debts and legacies, &c., or that portion of his estate and effects which has not been specifically devised or bequeathed.

Residuary legatee is he to whom a testator bequeaths the residue of his estate and effects, after the payment of such others as are specifically mentioned in the will.—*Toller*, 299; 2 *Bl.* 512.

RESIDUARY ESTATE. See tit. *Residuary.*

RESIDUARY LEGATEE. See tit. *Residuary.*

RESPECTU COMPUTI VICECOMITIS HABENDO. A writ directed to the treasurer and barons of the Exchequer for the *respiting of a sheriff's account.*—*Cowel.*

RESPITE, *To.* To adjourn, to forbear, to forego, &c. Thus to *respite* an appeal at the sessions appears simply to mean to adjourn it to some future period, or to forbear bringing it on at the time it was first entered for. *Respiting of homage* is the forbearing to enforce the duty of homage from a tenant who held his lands in consideration of doing homage to his lord.

RESPITE OF HOMAGE (*respectus homagii*). The forbearing or dispensing with the performance of homage by tenants who held their lands in consideration of performing homage to their lords. Such a respite was most frequently granted to those who held by knight service *in capite*, who paid into the Exchequer every fifth term some small sum of money to be *respited* from doing their *homage.*—*Cowel.*

RESPONDEAT or RESPONDEAS OUSTER. Upon an issue in *law* arising on a *dilatory plea*, the form of the judgment is that the defendant *answer over*, which is thence called a judgment of *respondeat ouster.* This not being a *final* judgment, the pleading is resumed, and the action proceeds.—*Stephen on Pleading*, 115; 2 *Arch. Pract.* 150.

RESPONDEAT SUPERIOR (*let the superior answer*). The phrase is thus used: *Pur insufficiency del bayliff d'un liberty* respondeat *dominus libertatis*, i. e. By the insufficiency of the bailiff of a liberty, let the lord of the liberty answer.—4 *Inst.* 114; *Cowel.*

RESPONDENT. The party who appeals against the judgment of an inferior court is termed the appellant, and he who contends against the appeal the *respondent.*

RESPONDENTIA (from the Fr. *repondre*, to answer). A contract by which the master or owner of a ship borrows money upon the goods and merchandise in the vessel, which

must necessarily be sold or exchanged in the course of the voyage, and in which case the borrower personally is bound to *answer* the contract, and is therefore said to take up money at *respondentia*. The general nature of a *respondentia* bond is this, the borrower binds himself in a large penal sum upon condition that the obligation shall be void, if he pay the lender the sum borrowed, and so much a month from the date of the bond till the ship arrives at a certain port, or if the ship be lost or captured in the course of the voyage.—*Park on Insurance*; 2 *Chitty's Bl.* 458.

RESPONSALIS. A procurator, or one who appears and answers for another in court at a day assigned. —*Fleta, lib.* 6, *c.* 13; *Cowel.*

RESPONSIVE ALLEGATION. See tit. *Allegation.*

RESTITUTIONE EXTRACTI AB ECCLESIA. A writ which formerly lay to restore a man to the church, which he had recovered for a sanctuary, being suspected of felony.—*Reg. Orig.* 69; *Cowel.*

RESTITUTIONE TEMPORALIUM. A writ which lay for the recovery of the temporalities of a bishopric, when a man had been elected and confirmed bishop of the same.—*Reg. Orig.* 294.

RESTS. The days of grace, which, according to the custom of commercial countries, are allowed for the payment of foreign bills and notes. The word is also used in reference to accounts between a debtor and creditor, and in this sense seems to signify the making a *pause* in the account by striking a balance therein.—See *Butler* v. *Harrison, Cowp.* 566.

RESULTING USE. See tit. *Use.*

RE-SUMMONS (*resummonitio*). A second summons, or calling a man again to answer an action, when from some occurrence the first summons is defeated, as by the death of the party or the like. — *Bro.* 214; *Cowel.*

RESUMPTION (*resumptio*). This word, as used in the stat. of 31 H. 6, s. 7, particularly signifies the taking again into the king's hands such lands or tenements as before, upon some false suggestion or other error, he had delivered to the heir, or granted by letters patent to any man. —*Cowel; Les Termes de la Ley.*

RETAINER (*retinere*). Is commonly used to signify a notice given to a counsel by an attorney on behalf of the plaintiff or defendant in an action, in order to secure his services as advocate when the cause comes on for trial. This notice is commonly accompanied with a fee called a retaining fee.

RETENEMENTUM. Restraining, keeping back, withholding, &c.—*Cowel.*

RETENTION. The right of retaining property until a debt due from the owner of such property to him who retains it is paid. See tit. *Lien.*

RETORNA BREVIUM DAY. A fixed day in term upon which writs were made returnable. See tit. *Return.*

RETORNO HABENDO. A writ that lies for the distrainor of cattle, goods and chattels, &c. (and who on *replevin* brought has proved his distress to be a lawful one) against him who was so distrained, to *have them returned to him* according to law.—2 *Arch. Pract.* 834, 845. See also tit. *Replevin.*

RETRAXIT (*he has withdrawn*). A *retraxit* is an open and voluntary renunciation in court of a suit by the plaintiff, by which he for ever loses his action. A *retraxit* is very similar to a *nolle prosequi*, the difference between them being that a *retraxit* is a bar to any future action for the same cause, whereas a *nolle prosequi* is not, unless made after judgment.—3 *Bl.* 296; 2 *Arch. Pract.* 1114; 2 *Sell. Pr. c.* 17, *s.* 3, *p.* 338; *Herbert* v. *Sayer*, 2 *Dowl. & L.* 65, n. (*b*).

RETURN (*retorna*). This is a word which is commonly applied to writs and judges' summonses, and literally signifies much the same as it does in its popular sense, viz. *to return or send back any thing*. Thus, writs are directed to certain persons (as to *sheriffs* for instance), commanding them to perform certain acts, and after a certain time to *return* the same into court again, together with a certificate or memorandum certifying or stating what they have done in pursuance of such command. This memorandum or certificate is written on the back of the writ, and is now commonly called the *return*; so that when a writ is directed to a *sheriff* commanding him to perform certain acts (as to arrest a man for instance), and the sheriff in due time *returns* the writ, together with such a memorandum as above described indorsed thereon, this memorandum is then called the *sheriff's return*. Before the 2 W. 4, c. 39, writs for the commencement of personal actions, viz. *writs of summons, capias*, and *detainer* were obliged to be *returned* upon certain fixed days in term, which were thence called the *return days* of the term; now, however, this is not the case, the return day being regulated by the service or execution of the writ. The meaning of the word *returnable* as applied to a judge's summons is nearly the same, signifying the *time* appointed by the judge in the summons for hearing the parties on the subject-matter of dispute: the summons is said to be *returnable* at such time, because the party who takes out such summons *returns* with it at the time therein appointed to the place whence he he took it out.—1 *Arch. Pract.* 97, 207; *Smith's Action at Law*, 24; 3 *Bl.* 273.

RETURN DAYS. Certain fixed days in term on which writs are returnable. See tit. *Return.*

RETURNO HABENDO. See tit. *Retorno habendo.*

RETURNUM AVERIORUM. See tit. *Retorno habendo.*

RETURNUM IRREPLEGIABILE. A judicial writ directed to the sheriff, commanding him to cause to be restored or *returned* to the owner, cattle which have been unjustly taken by another as *damage feasant*, and so found by the verdict of a jury.—*Cowel.*

REVE or GREEVE (from the Sax. *græfa*, a præfect). The bailiff of a franchise or manor; hence *shire-reve* is used for a sheriff, &c.—*Cowel.*

REVELAND (*terra regis*). Such land as having reverted to the king after the death of his *thane*, who had it for life, was not afterwards granted out to any by the king, but remained in charge on the account of the *reeve* or bailiff of the manor, who it seems concealed the land from the auditor and kept the profit of it himself, till it was discovered and presented to the king. — *Domesday; Spelman on Feuds.*

REVERSAL OF JUDGMENT. The annulling or making a judgment

void on account of some error in the same.—3 *Bl.* 410.

REVERSION (*reversio*). That which reverts or returns to a person. An estate in *reversion* is defined or rather described by Lord Coke to be "the returning of the land to the grantor or his heirs after the grant is determined." The idea of a reversion is founded on the principle, that where a person has not parted with his whole estate and interest in a piece of land, all that which he has not given away remains in him, and the possession of it *reverts* or returns to him upon the determination of the preceding estate. Thus, if a person who is seised in *fee* of lands conveys them to A. for life, he still retains the *fee simple* of the lands, because he has not parted with it; but as that fee simple can only return or fall into *possession* upon the determination or ending of the preceding estate (i. e. of A.'s estate for life) it is only an estate in *reversion*. So that perhaps a reversion may be shortly defined as "the residue of an estate left in the grantor." The *interest* which a man has in lands in reversion is commonly called a *reversionary interest*.—2 *Cruise*, 395, 396; 2 *Bl.* 175.

REVERSIONARY INTEREST. The right, title or interest which a person has in or to the reversion of lands or other property. A right to the future enjoyment of property at present in the possession or occupation of another. See tit. *Reversion*.

REVERTER, *Formedon in*. See tit. *Formedon*.

REVEST. To place one in the possession of anything of which he has been divested or put out of possession.—See 1 *Roper, Husb. & Wife*, 353. See also tit. *Devest*.

REVIEW, *Bill of*. A bill filed to reverse a decree in Chancery, which, after it has been duly enrolled, a party may find good grounds for having reversed, either from error apparent on the face of it, or from new facts discovered since the decree was made, or at least since publication passed in the cause, and which consequently could not be used when the decree was made.—*Gray's Ch. Pract.* 210; 3 *Bl.* 454.

REVIEW, *Commission of*. A commission sometimes granted in extraordinary cases to reverse the sentence of the court of delegates, when it was apprehended they had been led into a material error.—3 *Bl.* 67.

REVIEW, *Court of*. A court established by 1 & 2 W. 4, c. 56, for the adjudicating upon such matters in bankruptcy as before were within the jurisdiction of the Lord Chancellor. It forms a constituent and most important part of the Court of Chancery, and exercises a general jurisdiction in bankruptcy, the same as has hitherto been exercised by the Lord Chancellor, except as in the said act is otherwise provided; and all such matters to be heard and determined in the Court of Review shall be subject to an appeal to the Lord Chancellor on matters of law and equity, or on the refusal or admission of evidence.—*Arch. Bankruptcy*, 22.

REVIEW OF TAXATION. See tit. *Reviewing Taxation*.

REVIEWING TAXATION. The re-taxing or re-examining an attorney's bill of costs by the master. The courts sometimes order the masters to review their taxation, when, on being applied to for that purpose, it appears that items have been allowed or disallowed on some erroneous principle, or under some

mistaken impression.—*Arch. Pract.; Bag. Pr.*

REVIVING. In law signifies much the same as it does in its popular sense, viz. renewing, calling to life again, &c. Thus, when a certain time (a year and a day) has elapsed after judgment is signed, without execution being sued out upon it, the law presumes that the judgment has been executed, or that the plaintiff has released the execution; and the plaintiff, in order to sue out execution, must in this case first *revive* the judgment against the defendant by a writ of *scire facias*.—2 *Arch. Pract.* 851.

REVIVOR, *Bill of.* A bill in Chancery, which is filed for the purpose of *reviving* or calling into operation the proceedings in a suit, when, from some circumstances (as for instance, the death of a plaintiff), the suit has abated. It is not, however, in all cases, that the death of a party abates the suit; for it is a general rule, that wherever the right of the party dying survives to his co-plaintiff or co-defendant, and the cause is in the same condition after the party's death as it was before, that then the suit does not abate, and consequently does not require to be revived.—*Newl. Ch. Pr.; Gray's Ch. Pr.* 81; 3 *Bl.* 448.

REVOCATION, *Power of.* The power to revoke or call back something granted. As if a man make a conveyance of any lands, with a clause of revocation, at his will and pleasure, of such conveyance; here the clause by which such person reserves to himself the power of revoking such conveyance, is termed a *power of revocation*.—4 *Cruise*, 466; 2 *Bl.* 335.

RIDER. A rider or rider-roll signifies a schedule or small piece of parchment annexed to some part of a *roll* or record. It is frequently familiarly used for any kind of schedule or writing annexed to a document which cannot well be incorporated in the body of such document. Thus, in passing bills through parliament, when a new clause is added after the bill has passed through committee, such new clause is termed a *rider*.

RIDING CLERK. One of the six clerks in chancery, who in his turn kept for one year the controlment books of all grants that passed the great seal that year.—*Cowel.*

RIDINGS. The three great divisions of the county of York are called the North, West and East *Ridings*. The word *riding* is said to be a corruption of *trithing*.—*Cowel.*

RIENS ARREAR (*nothing in arrear*). A kind of plea used in an action of debt upon arrearages of account, by which the defendant alleges that there is *nothing in arrear*.—*Cowel.*

RIENS PASSE PAR LE FAIT (*nothing passes by the deed*). The form of an exception taken in some cases to an action.—*Cowel.*

RIENS PER DESCENT (*nothing by descent*). A plea pleaded by an heir to an action brought against him for debt due by his ancestor to the plaintiff, signifying that he has received *nothing* from his ancestor, and therefore is not liable for his ancestor's debt.—2 *Arch. Pr.* 936.

RIER COUNTY (*retro comitatus*). In the stat. 2 Edw. 3, c. 5, it is used as *open county*; and it seems to mean some public place, which the sheriff appointed for receipt of the king's money after the end of his county court.—*Cowel; Fleta, lib.* 2, *c.* 67.

RIGHT (*jus*). A lawful title or claim to any thing.

RIGHT, *Writ of*. See tit. *Writ of Right.*

RIGHT CLOSE, *Writ of*. A writ which the king's tenants in *ancient demesne* were entitled to, in order to try the *right* of their property in a peculiar court of their own, called a court of *ancient demesne*.—2 *Bl.* 99.

RIGHT OF ACTION. The legal right to maintain an action; a remedy by action at law.

RINGS, *Giving*. A custom observed by serjeants at law on being called to that degree or order. These rings bear the inscription of some motto selected by the serjeant about to take the new degree. Thus, we find it noted in 2 Queen's Bench Rep. 425, that Cresswell Cresswell, of the Inner Temple, Esq. was appointed a judge of the Common Pleas, in Hilary Term, 5th Vict., being first called to the degree of serjeant at law, when he *gave rings* with the motto "Leges juraque."

RIOT. If three or more persons assemble together, with an intent mutually to assist each other against any one who shall oppose them, in the execution of some enterprise of a private nature, with force or violence against the peace, or to the manifest terror of the people, whether the act intended were of itself lawful or unlawful, and though they after depart of their own accord without doing any thing, it is an *unlawful assembly*. If after their first meeting they move forward towards the execution of their intended purpose, whether they actually execute it or not, this, according to general opinion, is a *rout*. And if they put it into execution, then it is a *riot*. And if any person encourages, promotes or takes part in such riot, whether by words, signs or gestures, or by wearing the badges or ensigns of the rioters, he is considered a *rioter*.—1 *Hawk. c.* 65, *s.* 1; *Matt. Crim. Law*, 369.

ROBBERY (*robaria*). The felonious and forcible taking from the person of another, goods or money to any value by violence or putting him in fear.—1 *Hawk. P. C.* 25; 4 *Bl.* 243.

ROD-KNIGHTS or RADNIGHTS. Certain tenants who held their lands in consideration of serving their lords on horseback.—*Fleta, lib.* 3, *c.* 14; *Cowel.*

ROLL (*rotulus*). A schedule or sheet of parchment on which legal proceedings are entered. Thus the roll of parchment on which the issue is entered is termed the *issue roll*. So the rolls of a manor, wherein the name, rents and services of the tenants are copied and enrolled, are termed the *court rolls*. There are also various other rolls, as those which contain the records of the High Court of Chancery, which are kept in the rolls office of the chancery; those which contain the registers of the proceedings of our old parliaments, and which are called *rolls of parliament*; that in the Inner and Middle Temple called the *calves-head roll*, wherein every bencher was taxed annually at 2*s.*, every barrister at 1*s.* 6*d.*, and every gentleman under the bar 1*s.* to the cook and other officers of the house, in consideration of a *calves-head* dinner provided for them in Easter Term, &c.—*Orig. Jur.* 199; *Cowel.*

ROLLS COURT. See tit. *Master of the Rolls.*

ROUT. See tit. *Riot.*

ROYAL ASSENT. The royal as-

sent is the last form through which a bill goes previously to becoming an act of parliament: it is, in the words of Lord Hale, "the complement and perfection of a law." The royal assent is given either by the queen in person, or by royal commission by the queen herself signed with her own hand. It is rarely given in person, except at the end of the session, when the queen attends to prorogue parliament. See tit. *Le Roy le veut.*

ROYAL FISH. See tit. *Fish, Royal.*

ROYAL MINES. Those mines which are properly royal, and to which the king is entitled when found, are only those of silver and gold.—1 *Bl.* 294.

ROYALTIES (*regalia* or *regalitates*). The rights or prerogatives of the king. See tit. *Prerogative.*

RULE. This word is used in various senses. In its most common acceptation it signifies an order made by the court at the instance of one of the parties in a suit, usually commanding the opposite party to do some act, or to show cause why some act should not be done. A rule of this kind is said to be either a rule *nisi* or *to show cause*, or a rule *absolute*. A rule *nisi* or to *show cause*, commands the party to show cause why he should not do the act required, or why the object of the rule should not be enforced; a rule *absolute* commands the subject-matter of the rule to be forthwith enforced. There are some rules which the courts authorize their officers to grant as a matter of course, without formal application being made to them in open court, and these are technically termed *side-bar* rules; such, for instance, is the *rule to plead*, which is an order or command of the court requiring a defendant to plead within a specified number of days. Such also are the rules to reply, to rejoin, and many others, the granting of which depend upon settled rules of practice rather than upon the discretion of the courts. The word *rule*, when used as a verb, seems to have two significations: 1st, to command or require by a rule of court; as, for instance, "*to rule* the sheriff to return the writ;" "*to rule* the plaintiff to reply:" 2nd, to settle or decide a point of law arising upon a trial at nisi prius; as when it is said of a learned judge presiding at such a trial, that he *ruled* so and so, thereby meaning that his lordship laid down, settled or decided such and such to be the law. The rules for regulating the practice of the courts, and which the judges are empowered to frame and to put in force, as occasion may require, are also termed *rules of court.*

RULE OF COURT. The rules for regulating the practice of the different courts, and which the judges are empowered to frame, and to put in force as occasion may require, are termed *rules of court.*

RULE, *To.* Is commonly used in two senses: 1st, for commanding or requiring, by a rule or order of court; as *to rule* a sheriff to return a writ, &c.: 2nd, for to lay down or decide or settle a point of law. See the word used by Lord Denman in *Bingham* v. *Stanley*, 2 Q. B. Rep. 125; see also tit. *Rule.*

RULE TO PLEAD. See tit. *Rule.*

RULES OF THE KING'S BENCH PRISON. Were certain limits without the walls, within which all prisoners in custody in civil actions were allowed to live, upon giving security by bond, with two sufficient sureties, to the marshal, not to escape, and paying him a certain per centage on the amount of the debts for which they were detained.—*Bagley's Pract.*

RUN WITH THE LAND. See tit. *Running with the Land.*

RUNNING WITH THE LAND. A covenant is said to run with the land when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. Thus, if A. grant B. a lease of land for twenty-one years, and the lease, amongst other covenants, contain a covenant on the part of A. for the quiet enjoyment of the land by B. during the term; and also a covenant on the part of B. to cultivate the land demised in a particular manner; and B. afterwards assigns the land to C. for the residue of the term; in this case the liability to perform the covenant made by B., and the right to take advantage of the covenant made by A., would devolve upon C. as assignee of the land to which the covenants related, and in so doing they would be said to *run with the land.*—*Noke* v. *Awder*, *Cro. Eliz.* 436; *Cockson* v. *Cock*, *Cro. Jac.* 125.

RUNNING WITH THE REVERSION. A covenant is said to run with the reversion when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion. Thus, if A. grant a lease of land to B. for twenty-one years, and the lease, amongst other covenants, contains a covenant on the part of A. for the quiet enjoyment of the land by B. during the term, and also a covenant on the part of B. to cultivate the land demised in a particular manner; and A. afterwards assigns his reversion in the land to C.; in this case the liability to perform the covenant made by A., and the right to take advantage of the covenant made by B., would devolve upon C. as assignee of the reversion in the land to which the covenants related; and in so doing, they would be said to *run with the reversion.*—See *Noke* v. *Awder*, *Cro. Eliz.* 436; *Campbell* v. *Lewis*, 3 *B. & A.* 392; *Middlemore* v. *Goodale*, *Cro. Car.* 503; *Cockson* v. *Cock*, *Cro. Jac.* 125.

RURAL DEANS. See tit. *Deans.*

RURAL DEANERY. The circuit or jurisdiction of a *rural dean*. See tit. *Dean.*

RYDER. See tit. *Rider.*

S.

SAC (*saccha*). The liberty which the lord of a manor had of holding pleas and imposing mulcts and forfeitures upon transgressors, or upon trespassers within the manor. Some writers define it to be the forfeiture itself.—*Bracton*, *lib.* 3, *tr.* 2, *c.* 8; *Cowel.*

SACABURH or SACABERO. He who is robbed, or by theft deprived, of his money or goods, and puts in surety to prosecute the thief with fresh suit.—*Seld. Tit. Hon.*; *Britton*; *Cowel.*

SACRILEGE (*sacrilegium*). A desecration of any thing that is holy. The alienation of lands, which were given to religious purposes, to laymen or to profane and common purposes, was also termed *sacrilege.*—*Cowel.*

SAFE CONDUCT (*salvus conductus*). A guarantee or security granted by the king, under the great seal, to a stranger, for his safe coming into and passing out of the kingdom.—*Cowel*; 1 *Bl.* 259.

SAFE GUARD (*salva gardia*). A security given by the king to a stranger, who fears the violence of

some of his subjects, for seeking his right by course of law.—*Reg. Orig.* 26; *Cowel.*

SAFE PLEDGE (*salvus plegius*). A surety given for a man's appearance on a day assigned.—*Bract. lib.* 4, *c.* 2.

SALE (*venditio*). The transferring of property from one man to another, in consideration of some price or recompense in value, or (in law phraseology) for *valuable consideration.*—2 *Bl.* 446.

SALIQUE LAW (*lex Salica*). An ancient law made by Pharamond, King of the Franks, by which males only were capable of inheriting.—*Cowel.*

SALVA GARDIA. See title *Safe Guard.*

SALVAGE. The allowance made to persons by way of reward for *saving* and preserving the goods which are cast on the shore after a wreck.—1 *Bl.* 293.

SANCTUARY (*sanctuarium*). A consecrated place which had certain privileges annexed to it, and to which offenders were accustomed to resort in order to evade the severity of the law.—4 *Bl.* 332; *Staunf. Pl. Cor. lib.* 2, *c.* 38.

SANE MEMORY. Sound mind, memory and understanding.

SANS CEO QUE (*without this that*). A phrase formerly in use in the *vivâ voce* pleadings; the effect of which was to deny some allegation previously advanced by the opposite party. It appears to have had much the same operation as the traverse commonly called the traverse with an *absque hoc* or special traverse. See tit. *Absque hoc*; also tit. *Special Traverse.*

SATISFACTION. The satisfying a party by paying him what is due to him, or what is awarded to him by judgment of the court or otherwise. Thus a judgment is *satisfied* by payment of the amount due to the party who has recovered such judgment, or by the party's levying the amount or otherwise. The *entry of satisfaction on the roll* is a memorandum which is entered on the judgment roll, by which the party who has recovered the judgment, acknowledges that he has been *satisfied* by his opponent by payment of the damages, costs and charges, &c., and therefore that he may be acquitted thereof. A *satisfaction piece* is a memorandum written on a piece of parchment, stating that *satisfaction* is acknowledged between the plaintiff and defendant. This memorandum, or satisfaction piece, as it is called, is taken to one of the masters of the court, and from it he enters the satisfaction on the roll before mentioned.—1 *Arch. Pract.* 641.

SATISFACTION PIECE. See tit. *Satisfaction.*

SAVER DEFAULT. Literally to save a default; as in the case of a man having made *default* in court, and coming afterwards and alleging a good cause for making such default; as that he was imprisoned at the time, and the like.—*New Book of Entries; Cowel.*

SAVING THE STATUTE OF LIMITATIONS. Preventing the operation of the statute. A creditor is said to "save the statute" of limitations when he saves or preserves his debt from being barred by the operation of the statute. Thus, in the case of a simple contract debt, if a creditor commence an action for its recovery within six years from the time the cause of action accrued, he will be in time to "save the statute."—See tit. *Limitation.*

SCANDAL. The words *scandal* and *impertinence* are thus used with reference to pleadings in equity. Scandal is defined to be any thing alleged in a bill, answer or other pleading, in such language as is unbecoming the court to hear, or as is contrary to good manners; or any thing set forth which charges some person with a crime *not necessary* to be shown in the cause. Impertinence is defined to be the incumbering the records of the court with long recitals, or with long digressions of matters of fact, which are altogether unnecessary and totally immaterial to the point in question.—3 *Bl.* 442; *Gray's Chan. Pract.* 99.

SCANDALUM MAGNATUM. Scandal or spreading false reports against peers and certain other great officers of the realm is so called, and is subjected to peculiar punishment by divers ancient statutes. — 1 *Bl.* 402; *Cowel.*

SCAVAGE or SHEWAGE (from the Sax. *seawian*, to show). A toll exacted by the mayors, sheriffs and bailiffs of corporate towns, for wares or merchandise *showed* or exposed to sale within their precincts or jurisdiction.—*Les Termes de la Ley.*

SCHARPENNY. A small compensation which customary tenants paid to their lord to be discharged from the obligation of penning up their cattle at night in the pen of their lord. It signifies *dung-penny*, that is, money in lieu of dung.—*Cowel.*

SCHAVALDUS. The officer who collected the *scavage* money.—*Cowel.*

SCHEDULE. A piece of paper or parchment containing a list or inventory of things. It is very frequently used to signify an inventory.

SCHETTS. Usury was formerly so called.—*Rot. Parl.* 14.

SCIENTER. A term used in pleading to signify that part of the declaration which alleges the defendant's previous *knowledge* of the cause which led to the injury complained of; or rather, his previous knowledge of a state of things which it was his duty to guard against, and which his omission to do has led to the injury complained of. Thus, in an action upon the case for keeping dogs that chased and killed the plaintiff's cattle, that part of the declaration which, after stating that the "defendant wrongfully kept dogs," adds, "*knowing them to be accustomed to chase and kill cattle*," is termed the *scienter*. The following passage from the judgment of Ellenborough, C. J., in *Jackson* v. *Pesked*, 1 *M. & Sel.* 238, furnishes an apt illustration of the word: "In an action for keeping a mischievous bull, there was no *scienter* in the declaration; and after a verdict for the plaintiff, the judgment was arrested on that account; and the court said, 'they could not intend it was proved at the trial; for the plaintiff need not prove more than is in his declaration;' and yet every lawyer is aware that a *knowledge of the mischievous nature of the animal* is of the essence of such an action, and would therefore never suffer a jury, if he could control them, to find for the plaintiff in such a case, unless such a knowledge in the defendant were proved."—See *Steph. Plead.* 178, *4th edit.*; 1 *Chit. Pl. tit. Scienter*; 1 *M. & Sel.* 238.

SCILICET (*to wit, that is to say*). A word frequently used in pleadings to point out or particularize that which has been previously stated in general terms only. For more particular information with regard to this word, see tit. *Videlicet.*

SCIRE FACIAS (*that you make*

known). A *scire facias* is a judicial writ founded upon some matter of record, and requiring the person against whom it is brought to *show cause* why the party bringing it should not have the advantage of such record, or (as in the case of a *scire facias* to repeal letters patent) why the record should not be annulled and vacated. It is, however, considered in law as an action; and in the nature of a new original. It is used for a variety of purposes, but perhaps one of the most common to which it is applied, is to revive a judgment after it has become extinct. For all writs of execution must be sued out within a year and a day after the judgment is entered, otherwise the court concludes *primâ facie* that the judgment is satisfied and extinct, yet however it will grant this writ of *scire facias*, which states the judgment recovered by the plaintiff, and that execution still remains to be had, and commands the sheriff to *make known* to the defendant that he be in court at the return day, in order to show why the plaintiff ought not to have execution against him.—2 *Arch. Pract.* 850; 3 *Bl.* 422; *Smith's Action at Law*, 118.

SCIRE FECI. The form of the sheriff's return to a writ of *scire facias*, signifying that he *has made known* to the party, as the writ commanded him to do. See tit. *Scire Facius.*

SCIRE FIERI. When to a writ of execution issued against an executor or an administrator, the sheriff returns *nulla bona*, the plaintiff, if he can prove a *devastavit*, may sue out a *scire fieri* inquiry, which is a writ directed to the sheriff, commanding him that in case there shall be no goods of the testator remaining in the hands of the executor, he shall summon a jury to inquire whether the defendant has wasted the goods of the testator, and if a *devastavit* be found, that he shall warn the defendant that he be in court upon a day mentioned, to show cause why the plaintiff should not have a *fieri facias de bonis propriis* against him.—2 *Arch. Pract.* 934.

SCOT AND LOT. See tit. *Lot and Scot.*

SCOTS. Assessments by the Commissioners of Sewers are so called.—3 *Bl.* 74. See also tit. *Lot.*

SCRIVENER. A person to whom property was intrusted for the purpose of lending it out to others at an interest payable to his principal, and for a commission or bonus for himself whereby he sought to gain his livelihood. In order to make a man a *money scrivener*, he must carry on the business of being entrusted with other people's monies to lay out for them as occasion offers.—See *Arch. Bank.* 36; *Adams* v. *Malkin*, 3 *Camp.* 534, *per Gibbs, C. J.*; *Scott and another* v. *Melville and others*, 3 *Scott's N. R.* 346; 9 *Dowl.* 882.

SCUTAGE (*scutagium*). See tit. *Escuage.*

SCUTAGIO HABENDO. A writ that lay for the king or other lord against his tenant, who held by knight-service, to compel him to serve in the wars, or to find a substitute, or to pay scutage.—*F. N. B.* 83; *Cowel.*

SCYRA. See tit. *Scyre-gemot.*

SCYRE-GEMOT. A court held twice every year by the bishop of the diocese and the *ealdorman* (in shires that had ealdormen) and by the bishops and sheriffs in such as were committed to the sheriffs that were immediate to the king, wherein both the ecclesiastical and temporal laws were given in charge to the county. *Seld. Tit. of Hon.*; *Cowel.*

SEALER OF THE WRITS, &c.

(*sigillator brevium*). An officer belonging to the Court of Chancery, whose duty it is to seal the writs and instruments which issue out of that court. There is a similar officer belonging to the courts of common law. —*Cowel*; 1 *Arch. Pract.* 26.

SECK RENT. See tit. *Redditus Siccus.*

SECONDARY (*secondarius*). An officer of the Court of King's Bench and Common Pleas; so called because he was second or next to the chief officer. The secondaries of these courts were abolished by 7 Will. 4 & 1 Vict. cap. 30.—1 *Arch. Pract.* 21.

SECONDARY CONVEYANCES. Conveyances are sometimes divided into *primary* or *original* conveyances, and *secondary* or *derivative*; the first, as their title imports, are such as do not depend upon any previous conveyance, but are independent and original; the second are such as pre-suppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore or transfer the interest granted by such original conveyance; thus an assignment of a lease may be considered a *secondary* conveyance with respect to the lease itself.—2 *Bl.* 324.

SECONDARY USE. See tit. *Use.*

SECOND DELIVERANCE, *Writ of*, (*secunda deliberatione*). A writ which lies for a plaintiff after he has been non-suited in an action of *replevin*, in pursuance of which the sheriff must again deliver to the plaintiff the goods that were distrained, on his giving security, as he did in the first instance, to re-deliver them, if the distress proved a justifiable one.—3 *Bl.* 150; 2 *Arch. Pract.* 834.

SECOND SURCHARGE, *Writ of*. See tit. *Surcharge.*

SECRET COMMITTEE. A secret committee of the House of Commons is a committee specially appointed to investigate a certain matter, and to which secrecy being deemed necessary in furtherance of its objects, its proceedings are conducted with closed doors, to the exclusion of all persons not members of such committee. All other committees are open to members of the house, although they may not be serving upon them.

SECTA or SUIT (*a sequendo*). By these words were anciently understood the witnesses or *followers* of the plaintiff.—3 *Bl.* 295.

SECTA AD CURIAM. A writ that lies against him who refuses to perform his suit, either to the county court or court baron.—*Cowel.*

SECTA AD MOLENDINUM, *Writ de.* A writ which lay for the owner of a mill against the inhabitants of the place where such mill is situated, for not doing suit to the plaintiff's mill; that is, for not having their corn ground there.—3 *Bl.* 235.

SECTA AD JUSTITIAM FACIENDAM. A service which a man was bound to perform by his fee.—*Bract. lib.* 2, *c.* 16.

SECTA CURIÆ (*suit of court*). That suit or service which the feudal tenant was obliged to do for the lord in his courts in time of peace.—2 *Bl.* 54.

SECTA FACIENDA PER ILLAM QUÆ HABET ENICIAM PARTEM. A writ which lay to compel the heir who had the elder's part of the coheirs, to perform service for all the coparceners.—*Reg. Orig.* 177; *Cowel.*

SECTA REGALIS. A suit so called, by which all persons were bound twice in a year to attend the sheriff's tourn, in order that they might be informed in things relating to the public peace. It was so called because the sheriff's tourn was the *king's* leet, and it was held in order that the people might be bound by oath to bear true allegiance to the king.—*Cowel.*

SECTA UNICA TANTUM FACIENDA PRO PLURIBUS HÆREDITATIBUS. A writ that lay for an heir who was distrained by the lord to do more suits than one, in respect of the lands of divers heirs which had descended to him.—*Reg. Orig.* 177; *Cowel.*

SECTIS NON FACIENDIS. A writ that lay for a woman to be freed from performing suit of court for her dower. It also lay for a ward to be freed from suits of court during his wardship.—*Reg. Orig.* 173; *Cowel.*

SECUNDA SUPERONERATIONE PASTURÆ (*second surcharge of pasture or common*). See tit. *Surcharge.*

SECURITATE PACIS. A writ issuing out of chancery that lay for one who was threatened with death, or danger, against him who so threatened.—*F. N. B.* 79; *Cowel.*

SECURITATEM INVENIENDI QUOD SE NON DIVERTAT AD PARTES EXTERNAS SINE LICENTIA REGIS. An ancient writ that lay for the king against any of his subjects to prevent them going out of his kingdom.—*F. N. B.* 85; *Cowel.*

SECURITY FOR COSTS. When the plaintiff in a suit resides out of the jurisdiction of the court in which his suit is pending, or lives abroad, and the defendant is apprehensive that the plaintiff, in the event of being defeated, will evade payment of the costs or expenses of the suit, it is usual for him to apply to the court to compel the plaintiff's attorney to give *security for such payment*, and which the court usually orders to be done, on its appearing that there are good grounds for the application. The security is commonly effected by the plaintiff and two sureties entering into a bond to a sufficient amount to cover the supposed costs of the suit. —*Arch. Pract.; Lush's Pr.; Tidd's Pr.*

SECURITY FOR GOOD BEHAVIOUR, &c. See tit. *Surety of the Peace.*

SECUS (*Lat.*) Otherwise, not so, the contrary. See the word used in 1 *Man. & Gr.* 208, *n.*

SE DEFENDENDO (*in defending himself*). A plea pleaded by him who is charged with the death of another, to the effect that he was obliged to do what he did in *his own defence*, otherwise his life would have been in danger.—*Staunf. Pl. Cor. lib.* 1, *c.* 7; see tit. *Homicide.*

SED PER CURIAM (*but by the court*). But the court thought so and so. The court was of a different opinion. But the court was of this opinion.

SEIGNIOR (from the Fr. *seigneur*, lord). In its general signification means lord, but in law it is particularly applied to the lord of a fee or of a manor; and the fee, dominions, or manor of a seignior, is thence termed a *seignory*, i. e. a lordship. He who is a lord, but of no manor, and therefore unable to keep a court, is termed a *seignior in gross.* — *Kitchin*, 206; *Cowel.*

SEIGNIORAGE. A privilege or prerogative of the king, by which he

claims an allowance of gold and silver brought in the mass to be exchanged for coin.—*Cowel.*

SEIGNIOR IN GROSS. See tit. *Seignior.*

SEIGNIORY (*dominium*). See tit. *Seignior.*

SEISE. See tit. *Seisin.*

SEISED IN DEMESNE AS OF FEE. Is the strict technical expression used to describe the ownership in "an estate in fee-simple in possession in a corporeal hereditament." The word "*seised*" is used to express the "seisin" or owner's possession of a freehold property; "in *demesne*" or in his demesne (in dominico suo) signify that he is seised as *owner* of the land itself, and not merely of the seignory or services; and the concluding words "as of fee" import that he is seised of an estate of inheritance in fee-simple. Where the subject is incorporeal, or the estate expectant on a precedent freehold, the words "in his demesne" are omitted.—*Co. Litt.* 17 *a*; *Fleta*, *l.* 5, *c.* 5, *s.* 18; *Bract. l.* 4, *tr.* 5, *c.* 2, *s.* 2; 2 *Bl. Com.* 105; 1 *Stephen*, *Bl.* 220.

SEISIN (*seisina*). Possession of a *freehold* estate. Upon the introduction of the feudal law into England, the word seisin was applied only to the *possession* of an estate of freehold, in contradistinction to that precarious kind of possession by which tenants in villenage held their lands, which was considered to be the possession of those in whom the freehold continued. The word still retains its original signification, being applied exclusively to the possession of land of a freehold tenure, it being inaccurate to use the word as expressive of the possession of leaseholds or terms of years. To *seise* signifies to take possession of land of a freehold tenure by the ceremony of livery of seisin or delivery of possession; *to be seised*, to be in possession of such land; and the possession of the land itself, which has been acquired by the ceremony of livery of *seisin*, is thence denominated *seisin* or *seisin*. The following passage from Cruise's Dig. tit. 8, c. 1, s. 10, affords a good illustration of the word. "A tenant for years is not said to be *seised* of the lands, the possession not being given to him by the ceremony of livery of seisin; nor does the mere delivery of a lease for years vest any estate in the lessee, but only gives him a right of entry on the land; when he has actually entered, the estate becomes actually vested in him, and he is then possessed, not properly of the land, but of the term for years, the seisin of the freehold still remaining in the lessor." It may be observed, however, that the word *seise* is sometimes used in reference to the possession of goods. Thus, in *Taylor* v. *Fisher*, *Cro. Eliz.* 245, 246, the following passage occurs: "Trespass for breaking his house and taking away a corslet and a pike of the plaintiff's. The defendant pleaded that long time before the supposed trespass, J. Bamfield was *seised of the said corselet and pike*, as of his own goods, &c."—See *Watk. Introd. Conv. by Morley*, *Coote and Cov. 7th edit. pp.* 32, 33; 1 *Cru. Dig. tit.* 8, *c.* 1, *s.* 10; 2 *Cr. Mee. & R.* 41, *n.* (*a*); 3 *Camp.* 116, *per Ellenborough*, *C. J.*; 2 *Cr. & Jer.* 698; *Cro. Eliz.* 245, 246; 2 *Bl.* 209.

SEISINA HABENDA QUIA REX HABUIT ANNUM, DIEM ET VASTUM. A writ that lay for delivery of *seisin* to the lord of his lands or tenements, after the king, in right of his prerogative, has had the year, day, and waste, on a felony committed.—*Reg. Orig.* 165; *Cowel.*

SEIZING OF HERIOTS. The seiz-

ing of heriots, when due on the death of a tenant, is a species of self-remedy, resembling that of taking cattle or goods in distress; excepting that a distress is merely taken as a pledge for other property, whereas a heriot is the actual property of him who so seizes it.—3 *Bl.* 15.

SELECT COMMITTEE. See tit. *Committee Select.*

SELF-DEFENCE. See tit. *Defendendo.*

SEMBLE. It would seem; it would appear, &c. EX. gr. "In assumpsit on a promise to manage a farm in a good and husbandlike manner, and according to the custom of the country; *semble* that it is sufficient to assign a breach in the words of the promise."—1 *Cr. & Mee.* 89.

SENESCHAL (*senescallus*). A steward, &c. See tit. *Steward.*

SENESCHALLO ET MARESHALLO QUOD NON TENANT PLACITA DE LIBERO TENEMENTO, &c. A writ directed to the steward and marshal of England, inhibiting them to take cognizance of any action in their court that concerned either freehold, debt, or covenant.—*Reg. Orig.* 185; *Cowel.*

SEPARATE DEMISE IN EJECTMENT. A demise in a declaration in ejectment is termed a *separate* demise when made by the lessor separately or individually, as distinguished from a demise made jointly by two or more persons, which is termed a *joint* demise.

SEPARATE ESTATE. Property which a married woman, under certain circumstances, is entitled to retain for her separate and independent use. By the custom of London a married woman may acquire a separate estate, by carrying on trade on her own separate account. The right of the wife to the enjoyment of property, separate from her husband, is usually secured by trustees being appointed on her behalf, to whom the property is conveyed in trust for her sole and separate use; but although no trustees be appointed for the wife, under a limitation to her separate use, equity would convert her husband into a trustee for her, and she would still be entitled to the enjoyment of the separate estate.—*Sugd. Vend. and Purch.* 330; 2 *Roper on Husband and Wife*, 151, 267.

SEQUATUR SUB SUO PERICULO. A writ that lay when a summons *ad warrantizandum* had been awarded, and the sheriff returned that he had nothing whereby he might be summoned; after which went out an *alias* and a *pluries*, and if he came not at the *pluries*, then this writ was issued out.—*Cowel.*

SEQUELA CAUSÆ. The process and depending issue of a cause for trial.—*Cowel.*

SEQUELA CURIÆ. Suit of court.—See tit. *Secta Curiæ.*

SEQUELA MOLENDINI. Suit of mill, or the obligation laid by the lord on many of his tenants of grinding their corn at a particular mill.—*Cowel*; see also tit. *Secta Molendini.*

SEQUENDUM ET PROSEQUENDUM. To follow and prosecute a cause or suit.—1 *Vent.* 74.

SEQUESTER (*sequestrare*). As used in the civil law signifies to renounce or disclaim, &c. As when a widow comes into court, and disclaims to have anything to do or to intermeddle with her deceased husband's estate, she is said to *sequester*. It also signifies the act of taking in

execution under a sequestration the ecclesiastical goods and chattels of a beneficed clerk or clergyman. See tit. *Sequestration.*

SEQUESTRARI FACIAS (*that you cause to be sequestered*). A writ of execution against a clergyman, directed to the bishop of the diocese in which the defendant resides, commanding the bishop to enter the rectory and parish church, and to take and sequester the same, and hold them until of the rents, tithes, and profits thereof, and of the other ecclesiastical goods of the defendant, he shall have levied the plaintiff's debt.—2 *Arch. Pract.* 966.

SEQUESTRATION (*sequestratio*). This word, in its most ordinary sense, signifies a kind of execution for debt, and is most frequently used against a beneficed clerk or clergyman. In this case the plaintiff sues out a *fieri facias de bonis ecclesiasticis*, directed to the bishop of the diocese, commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese, the sum mentioned in the writ. This writ is taken to the registrar of the diocese, who thereupon issues a *sequestration*, which is in the nature of a warrant, directed to the churchwardens, requiring them to levy the debt of the tithes and other profits of the defendant's benefice. *Sequestration* also issues in chancery when a defendant has eluded the process of the court, and a commission of rebellion has been awarded against him to no effect; by virtue of which sequestration his personal estate, and the profits of his real, are seized and detained until the defendant obey the commands of the court. A *sequestration* is also defined to be the separating of a thing in controversy, from the possession of both those who contend for it, and in this sense it is considered either as *voluntary* or *necessary*; the former being that which is done by the consent of each party, the latter that which is done by the judge of his own authority, whether the parties will or not. The word sequestration is also used to signify the act of the ordinary, in disposing of the goods and chattels of a deceased person, whose estate no man will meddle with. It is also used to signify the gathering, collecting, and taking care of the fruits and profits of a vacant benefice, for the benefit of the next incumbent. The persons who are appointed to take care of the goods and chattels, or of the rents and profits of lands that are so sequestered, are denominated *sequestrators.* —2 *Arch. Pract.* 966; 3 *Bl.* 444; *Cowel.*

SEQUESTRATOR. See tit. *Sequestration.*

SEQUESTRO HABENDO. A judicial writ which lay for a parson to dissolve a *sequestration* made by the bishop on the profits of his benefice, in order to compel his appearance at the suit of another. The parson, on his appearance, may have this writ to discharge the sequestration.—*Reg. Jud.* 36; *Cowel.*

SERIATIM. Severally, separately, individually, one by one: ex. gr. "Their lordships delivered their judgments *seriatim.*" In cases of great importance, or when the judges wish the grounds upon which their judgments are founded to be distinctly known, or when they differ in opinion, it is usual for them to deliver their judgments individually, instead of delegating one with the power of delivering the united judgment of the whole court, and in such case they are said to deliver their judgments *seriatim.*

SERJEANT or SERGEANT (Lat. *serviens*). There are various officers

connected with the law that are denominated *serjeants;* as serjeant at law, serjeant at arms, serjeant of the mace, &c. A serjeant at law is a barrister of the common law courts of high standing, and of much the same rank as a doctor of law is in the Ecclesiastical Courts. These serjeants seem to have derived their title from the old Knights-Templars (amongst whom there existed a peculiar class, under the denomination of *freres "sergens,"* or *fratres servientes*), and to have continued as a separate *fraternity* from a very early period in the history of the legal profession. The barristers who first assumed the old monastic title were those who practised in the Court of Common Pleas, and with the exception of a very short period the serjeants at law have always had, and still have, the exclusive privilege of practice in that court. Every judge previous to his elevation to the bench is created a serjeant at law, and amongst all the serjeants, judges, and others, the practice is to address each other by the familiar epithet of *"Brother."* A *serjeant at arms* is an officer connected with the House of Commons, whose duty it is to keep the doors of the house, and also to apprehend and to take into custody any offender whom the house may commit to his charge. There is a similar officer connected with the House of Lords. There is also a *serjeant at arms* belonging to the Court of Chancery, whose duty it is to apprehend such persons as are guilty of contempt of court, &c. *Serjeants of the mace* are a kind of inferior officers, who attend the mayor or other head officer in the city of London, and other corporate towns. —*Cowel;* 3 *Bl.* 444; *Kitchin,* 143; *Addison's Knights Templars,* 318; 2 *Dowl.* 814; *Power* v. *Fry,* 3 *Dowl.* 140; *The Serjeants' Case,* 6 *Bing. N. C.* 235; *Fortesc. c.* 50; 10 *Rep. Pref; Manning's Serjeants' Case;* 3 *Stephen's Bl.* 386.

SERJEANT AT ARMS. Is the title of an officer in each of the two Houses of Parliament. His duties in the House of Lords are to attend upon the Chancellor with the mace, and to execute the orders of the House for the apprehension of delinquents; and in the Commons this officer attends upon the Speaker with the mace, carries messages from the bar to the table, and executes the orders of the House with respect to delinquents to be taken into his custody for breaches of its privileges.

SERJEANT AT LAW. See tit. *Serjeant.*

SERJEANT OF THE MACE. See tit. *Serjeant.*

SERJEANTY *(serjeantia).* A species of tenure by knight service, which was due to the king only, and was distinguished into *grand* and and *petit serjeanty:* the tenant holding by grand serjeanty was bound, instead of serving the king *generally* in his wars, to do some honorary service to the king in person, as to carry his banner, his sword, or the like; or to be his butler, champion, or other officer at his coronation. *Petit serjeanty* differed from grand serjeanty in that the service rendered to the king was not of a personal nature, but consisted in rendering him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like.—2 *Bl.* 73, 81; *Cowel.*

SERVAGE. The obligation imposed by a lord on his tenant of not only paying a certain rent for his lands, but also of finding one or more workmen for his lord's service.—2 *Inst.* 274.

SERVICE (*servitium*). The consideration which the feudal tenants were bound to render to their lords in recompense for the lands they held. This service in original feods was only twofold; to follow or do *suit* to their lord, in his courts in time of peace, and in his armies or warlike retinue, when necessity called him to the field. Generally, however, these services varied much; some being of a personal nature, others not; some of an honorable character, others of a menial or servile character.—*Britton, cap. 66*; 2 *Bl. 53.*

SERVICE OF WRITS, &c. The *service* of writs, summonses, rules, &c. signifies the delivering or leaving them with the party to whom, or with whom they ought to be delivered or left: and when they are so delivered, they are then said to have been *served.*

SERVIENT TENEMENT. See tit. *Servitude.*

SERVITIIS ACQUIETANDIS. A judicial writ that lay for a person who was distrained for services as due to one man, when they were due to another; for the *acquittal* of such *services.*—*Cowel.*

SERVITIUM FEODALE ET PRÆDIALE. A service due in respect of lands held in fee: not a personal service.—*Bract. lib. c.* 16; *Cowel.*

SERVITIUM FORINSECUM. A service which was not due to the chief lord, but to the king. It was called *forinsecum* and *foraneum* because it was done *foris, vel extra servitium quod fit domino capitali.*—*Cowel; Monast.* 2 *tom. p.* 48.

SERVITIUM INTRINSECUM. That service which was due to the chief lord alone from his vassals.—*Fleta, lib. 3, c.* 14; *Cowel.*

SERVITIUM LIBERUM. A sort of free or liberal service which certain feodatory tenants, called *liberi homines*, were bound to perform. And as these tenants themselves were different from vassals, so were their services of a more honorable nature; as to attend the lord's court, to find a man and horse to go with the lord into the army, and such like.—*Cowel.*

SERVITIUM REGALE. *Royal service;* or the rights and prerogatives of manors which belong to the king when lord of it; and which were generally reckoned to be six; viz. 1, power of judicature in matters of property; 2, power of life and death in felonies and murders; 3, a right to waifs and estrays; 4, assessments; 5, minting of money; 6, assize of bread, beer, weights, and measures. —*Cowel.*

SERVITORS OF BILLS. Were messengers of the *marshal* of the King's Bench, who were sent to serve *bills* or writs to summon men to court. They are now more commonly called *Tipstaves.*—2 *H.* 4, *c.* 23; *Cowel.*

SERVITUDE. In its original and popular sense signifies the duty of service; or rather the *condition* of one who is liable to the performance of services. The word, however, in its legal sense, is applied figuratively to *things.* When the freedom of ownership in land is restricted or fettered, by reason of some person, other than the owner, having some right therein, the land is said to *serve* such person; the restricted condition of the ownership, or the right which forms the subject-matter of the restriction, is termed a *servitude;* and the land so burdened with ano-

ther's right is termed a *servient* tenement. The principles with regard to servitudes, and the terms employed in treating of them, are borrowed from the Roman law. In the language of the Roman law a thing is said to be *servient* in which, although it is owned by another, we have a real right, by virtue of which, and for the advantage of our person or property, we can require the owner, or any possessor of the thing, to suffer, or omit to do something with respect to such thing, which he would not have to submit to, if the rights comprised in the ownership rested in himself undiminished. Servitude is therefore a *jus in re*, as distinguished from a *jus ad rem:* the former is a real right, or a right *in* the thing itself, and consequently has effect against every third person; while the latter is a personal right, or a right *to* the thing, and hence applies only against the actual obligee. If my neighbour burthens his land for me, or for the benefit of my land, with the *servitus compascui*, or with the servitus ne luminibus officiatur, or gives me a right of usufruct therein, I have in each of these cases a *jus in re*, and every holder of the land must suffer me to pasture my cattle on it (*serv. comp.*) and enjoy the usufruct thereof; and he must abstain from erecting anything on his ground, or doing anything to it whereby my light, my pasture, or my usufruct would be injured. The word servitude may be said to have both an active and a passive signification: in the former sense denoting the restrictive *right* belonging to the entitled party; in the latter, the restrictive *duty* entailed upon the proprietor or possessor of the servient land.—*Gaius*, ii. 28, 33; *Inst.* ii. 35; *Dig.* vii. & viii.; *Cod.* iii. 33 & 34. See also *Savigny, Besitz*, p. 97; *Hufeland, Geist. des Rom. Rechts, vol.* 2, *div.* 2; and other authorities cited in *Mackeldy's Civ. Law, by Kaufman*, p. 320, 321; also *Grotius, Dutch Jurisp. c.* 34.

SESSION (*sessio*). The sitting of the justices in court by virtue of their commission. There are various kinds of sessions, viz. 1, *Session of Parliament;* 2, *Great Session of Wales;* 3, *Session of Gaol Delivery;* 4, *Sessions of the Peace.* These will be explained in their order. 1, Session of parliament signifies merely the sitting of parliament in order to transact the business of the state. 2. The great session of Wales was a session or court held in Wales twice in every year similar to our assizes; these sessions however were abolished by the 1 Wm. 4, c. 70, and two of our judges now go the circuits in Wales and Cheshire the same as in the English counties. 3, *Session of gaol delivery* was a session held for delivering a gaol of the prisoners therein confined. 4, *Sessions of the peace.* This is a court of record, and is held before two or more justices of the peace, one of which must be of the *quorum.* The jurisdiction of this court by stat. 34 Edw. 3, c. 1, extends to the trying and determining all felonies and trespasses whatsoever, although they seldom if ever try any greater offence than small felonies. There are three different kinds of sessions held by justices of the peace. 1, General sessions, which may be held at any time of the year for the general execution of the authority of the justices. 2, The general quarter sessions, which are held at four stated times in the year. 3, A special or petty sessions, which may be holden on any special occasion for the execution of some particular branch of the authority of the justice.—4 *Bl.* 271; 2 *Hal. P. C.* 42; *Tomlins.*

SESSIONAL ORDERS. These are certain resolutions which are agreed to by both Houses at the commence-

ment of every session of parliament, and have relation to the business and convenience thereof; but they are not intended to continue in force beyond the session in which they are adopted.

SESSIONS FOR WEIGHTS AND MEASURES. A session in London which may be held before four justices, selected from the mayor, recorder, and aldermen (of which the mayor or recorder must be one), to inquire into the offences of selling by false weights and measures, contrary to the statutes, and to receive indictments, punish offenders, &c.—*Cunningham.*

SET. This word appears to be nearly synonymous with the word "lease." When used as a verb, it would seem to convey the same meaning as "to lease." A lease of *mines* is frequently termed a "mining *set.*"

SET-OFF. A demand which the defendant in an action sets up against the plaintiff's demand, so as to counterbalance that of the plaintiff's either altogether or in part. As if the plaintiff sues for ten pounds due on a note of hand, the defendant may *set off* nine pounds due to himself from the plaintiff, for merchandise sold to the plaintiff; and if he pleads such set-off in reduction of the plaintiff's claim, such plea is termed a *plea of set-off.* A *set-off* may therefore be defined to be a claim which a defendant has upon a plaintiff, and which he sets up or places against the plaintiff's demand.—3 *Bl.* 304.

SETTLEMENT, *Act of.* The stat. of 12 & 13 W. 3, c. 2, by which the crown was limited to the house of Hanover, and some new provisions were added at the same time for better securing our religion, laws, and liberties.—1 *Bl.* 129.

SETTLEMENT, *Deed of.* A deed made for the purpose of settling and arranging of property; and the party who so makes such a deed is frequently called the *settlor.* See *Jefferys* v. *Jefferys*, 1 *Cr. & Ph.* 140.

SETTLOR. See tit. *Settlement, Deed of.*

SEVER, *To.* See tit. *Severance.*

SEVERAL ACTION. An action in which two or more persons are severally charged.—*Cunningham.*

SEVERAL COVENANT. A covenant by two or more persons *severally*, that is, not jointly, so that they are severally or separately bound by it. —5 *Rep.* 23.

SEVERAL FISHERY. See tit. *Piscary.*

SEVERAL INHERITANCE. An inheritance conveyed in such manner as to descend or come to two or more persons severally, that is, not jointly, but by moieties.—*Cunningham.*

SEVERAL TAIL (*tallium separatum*). An entail *severally* to two: as if land is given to two men and their wives and to the heirs of their bodies begotten; here the donees have a joint estate for their two lives, and yet they have a *several* inheritance, because the issue of the one shall have his moiety, and the issue of the other the other moiety.—*Cowel.*

SEVERAL TENANCY (*tenura separalis*). A plea or exception taken to a writ that is laid against two as joint, which are *several.*—*Cowel.*

SEVERALTY. A person is said to hold lands in *severalty* when he is the sole tenant thereof, and holds them in his own right only, without any

other person being joined or connected with him in point of interest during his estate therein.—2 *Bl.* 179.

SEVERANCE. Singling, dividing, disjoining. Thus in pleading, when there are several defendants in an action, thay may either all plead jointly one and the same defence, or each defendant may plead a separate answer for himself if he thinks such a course preferable; in which case he is said to *sever*, and the subject generally is termed *severance in pleading*. When, however, defendants have once united in the plea, that is, have pleaded a joint defence, they cannot afterwards sever at the rejoinder, or other later stage of the pleading. The word severance is also used to signify the cutting of crops, such as corn, grass, &c.—*F. N. B.* 78; *Step. Pl.* 285, *4th ed.*; 4 *Barn. & Cres.* 704.

SEWERS, *Commissioners of.* The court of commissioners of sewers is a temporary tribunal erected by virtue of a commission under the great seal. Its jurisdiction is to overlook the repairs of sea banks, and sea walls, and the cleansing of rivers, public streams, ditches, and other conduits whereby any waters are carried off; and is confined to such county or particular district as the commission shall expressly name.—3 *Bl.* 73.

SHAM PLEADING. Pleading a plea for the mere purpose of delay, and which he who pleads it knows to be false; and the plea itself is thence denominated a *sham plea.*—*Step. on Plead.* 474.

SHEPWAY, *Court of.* A court of the lord warden of the *cinque ports*, into which writs of error lie from the mayor and jurats of each port, and from this court into the Court of King's Bench.—3 *Bl.* 79.

SHERIFF (from the Saxon *scire gerefa*). A sheriff is the principal officer in every county, and has the transacting of the public business of the county. He is an officer of great antiquity, and was also called the *shire-reeve*, *reeve*, or *bailiff*. He is called in Latin *vicecomes*, as being the deputy of the earl or *comes*, to whom the custody of the shire is said to have been committed at the first division of this kingdom into counties. But the earls in process of time, on account of their high employments and attendance on the king's person, not being able to transact the business of the county, were delivered of that burden, reserving to themselves the honor, but the labour was laid on the sheriff, who now therefore does all the king's business in the county. The office of sheriff lasts for one year, and his duties, which are very numerous and important, are commonly performed by his deputy, called an *under-sheriff*. The duties principally consist in executing writs, precepts, warrants from justices of the peace for the apprehension of offenders, &c. He is also empowered to act as judge in the county court (or sheriff's court, as it is sometimes called), where actions are brought for recovery of sums under twenty pounds. All these functions however are, as before observed, performed by deputy.—1 *Bl.* 339; 1 *Arch. Pract.* 28.

SHERIFF'S COURT. The court held before the sheriff's deputy, that is, the under-sheriff, and wherein actions are brought for recovery of debts under twenty pounds: writs of inquiry are also brought here to be executed.

SHERIFF'S POUNDAGE. See tit. *Poundage, Sheriff's.*

SHERIFF'S TOURN. The *sheriff's tourn*, or rotation, is a court of record, held twice every year before the she-

riff in different parts of the county; being indeed only the *turn* of the sheriff to keep a court leet in each respective hundred. This therefore is the great court leet of the county, as the county court is the court baron: for out of this, for the ease of the sheriff, was it taken. — 4 *Inst.* 259; 2 *Hawk. P. C.* 55; 4 *Bl.* 273.

SHERIFFALTY. Sheriff-ship, or office of sheriff: thus, during his sheriffalty, means during the time that he was sheriff.—*Cowel.*

SHERIFF-GELD. A rent which sheriffs were formerly required to pay. —*Rot. Parl.* 50 *Edw.* 3.

SHERIFF-TOOTH. Appears to have been a tenure by the service or duty of providing entertainment for the sheriff at his county-tourns, or courts.—*Cowel.*

SHERIFFWICK. The jurisdiction of a sheriff.

SHEW CAUSE, *Rule to.* See tit. *Absolute Rule.*

SHEWING. To be quit of attachment in any court, and before whomsoever, in plaints *shewed* and not avowed.—*Cowel.*

SHEWING CAUSE. See tit. *Absolute Rule.*

SHIFTING USE. See tit. *Use.*

SHIP-MONEY. An ancient imposition, which, after having lain dormant for many years, was revived by King Charles the First, in 1635 and 1636. It consisted in a tax levied on all the ports, towns, cities, boroughs, and counties of the realm for providing and fitting out ships for the king's service.—4 *Bl.* 437; *Cowel;* 17 *Car.* 1, *cap.* 14.

SHIRE CLERK. He who keeps the county court; his office is so incident to the sheriff that the king cannot grant it.—*Cowel.*

SHIRE-MAN or SCYRE-MAN. Anciently a judge of the county by whom trials for land, &c. were determined.—*Cowel.*

SHIRE-MOTE. The assizes of the *shire* or the assembly of the people was so called by the Saxons. It was nearly if not exactly the same as the *scyre-gemot,* and in most respects corresponded with what we now call the county court.—*Cowel.*

SHORT CAUSE IN CHANCERY. Is a cause which is not likely to occupy a great portion of the time of the court, and which may be entered in the list of "short causes," set apart for the purpose, upon the application of one of the parties and a certificate of his counsel that the cause is a proper one to be heard as a "short cause." If both the parties consent to the speedy decision of the suit, the cause is heard as a "consent cause;" but if one refuses to consent, and throws obstacles in the way of its speedy decision, it may then, under the circumstances, and in the manner above explained, be still heard more speedily than it would be in its regular course by its entry as a "*short cause.*"—1 *Smith's Chan. Pr.* 541, 3*d ed.*; 11 *Sim.* 51; 2 *Keen,* 671; 1 *Keen,* 464; 2 *M. & C.* 452.

SHRIEVALTY. See tit. *Sheriffalty.*

SI FECERIT TE SECURUM. One of the species of original writs, which was so called from the words of the writ, which directed the sheriff to cause the defendant to appear in court without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim.—3 *Bl.* 274.

SI NON OMNES. A writ on association of justices, by which *if all* in commission cannot meet at the day assigned it is allowed that two or more of them may finish the business. And after the writ of association it is usual to make out a writ of *si non omnes*, directed to the first justices and also to those who are associated to them; which, after reciting the purport of the two former commissions, commands the justices that if all of them cannot conveniently be present, such a number of them may proceed, &c.—*F. N. B.* 111; *Cowel; Tomlins.*

SI RECOGNOSCANT. A writ that lay for a creditor against his debtor for money numbered, who had before the sheriff in his county court acknowledged himself to owe his creditor such a sum received of him in *pecuniis numeratis.* — *Old Nat. Brev.* 68; *Cowel.*

SICUT ALIAS (*as at another time, &c.*) These words are applied to a writ which is the same as has been issued before; as a *sicut alias distringas*, which may be issued after another *distringas.*—2 *Arch. Pract.* 831. See tit. *Alias.*

SIDE BAR RULE. See tit. *Rule.*

SIDESMEN. Or as they were likewise termed *synodsmen*, were originally persons whom, in the ancient episcopal synods, the bishops were wont to summon out of each parish to give information of the disorders of the clergy and people. These in the process of time became standing officers, under the title of *sidesmen*, synodsmen or questmen. The whole of their duties seems now to have devolved by custom upon the churchwardens of a parish.—*Cripp's Laws of the Church and Clergy*, 180; *Kennett, Par. Ant.* 649; *Prid. Churchwardens, c.* 1.

SIGNET. See tit. *Privy Seal.*

SIGNIFICAVIT. Is that clause of the writ *de contumace capiendo* which states that a certain judge or other competent person has "*signified*" to the king that he against whom the writ is issued "is manifestly contumacious." It is in the following form: "William the Fourth, by the grace of God," &c., to the sheriff of —— shire, greeting: Sir John Nicholl, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, hath *signified* to us that one A. B. Esq., of the parish of ——, in the county of ——, is manifestly contumacious." The "*significavit*" is inserted in other writs of a similar nature. Sometimes the writ itself, which contains this clause, is termed a "significavit."—See 3 *Bl.* 102; *Rex* v. *Ricketts*, 6 *Ad. & E.* 537 *et seq.* See also tit. *Excommunicato capiendo.*

SIGN MANUAL. The signature or subscription of the king is termed his *sign manual.*—2 *Bl.* 347.

SIGNING JUDGMENT. Is the act of entering the judgment, which either the plaintiff or defendant has obtained in an action. Judgments, like the pleadings, were formerly pronounced in open court, and are still always supposed to be so. But by a relaxation of practice, now, in general, except in the case of an issue in law, there is no actual delivery of judgment either in court or elsewhere. The plaintiff or defendant, when the cause is in such a state that by the course of practice he is entitled to judgment, obtains the signature or allowance of the proper officer of the court, expressing generally that judgment is given in his favour, and this is called *signing judgment*, and stands in the place of the actual delivery thereof by the judges themselves. And sometimes the officer

only grants his permission to sign; for it has been stated that the signing of the judgment is but the leave of the master of the office for the attorney to *enter* the judgment for his client."—*Style's Prac. Reg. tit. Judgment; Stephen's Pl.* 122, *5th ed.*; 2 *Ar. Pr. by Chitty*, 702, *7th ed.*; 1 *Manning's Exch.* 352, *n.* (*o*).

SILK GOWN. Is the professional robe worn by those barristers who have been appointed of the number of her majesty's counsel, and is the distinctive badge of queen's counsel, as the *stuff* gown is of the "juniors" who have not attained that dignity. Accordingly, when a barrister is raised to the degree of queen's counsel, he is said to have "got a silk gown." The right to confer this dignity resides with the Lord Chancellor, who disposes, or is supposed to dispose, of this branch of his patronage according to the talents, the practice, the seniority and general merits of the junior counsel.

SIMILITER. That set form of words used by the plaintiff or defendant in an action by which he signifies his acceptance of the issue tendered by his opponent. When simply *added* to the adversary's pleading, containing the tender of issue, it is in the following form: "And the plaintiffs (or 'defendants,' as the case may be) doth the *like*." When, instead of being simply *added* to the pleading as above explained, it is delivered to the opposite party as a separate instrument, it then runs in the following form: "And the plaintiff, as to the plea of the defendant by him above pleaded, and whereof he hath put himself upon the country, doth the like;" and in this case it is called a "*special similiter*." The use of the *similiter* is only applicable to issues of fact which are triable by the country (i. e. a jury). It serves, says Mr. Serjeant Stephen, to mark the acceptance both of the question itself, and the mode of trial proposed, although originally it seems to have been introduced with the view to the *latter* point only. The resort to a jury in ancient times could in general be had only by the mutual *consent* of each party. It appears to have been with the object of expressing such consent, that the similiter was in those times added in drawing up the record; and from the record it afterwards found its way into the written pleadings. Accordingly, no similiter or other acceptance of issue is necessary, when recourse is had to any of the *other modes* of trial.—*Step. Pl.* 265, 266, *4th ed.*

SIMONY (*simonia*). The corrupt presentation of any one to an ecclesiastical benefice for money, gift, or reward, and any resignation or exchange for money is corrupt, however apparently fair the transaction. It is said to be called simony from the resemblance it bears to the sin of Simon Magus.—4 *Bl.* 63; 3 *Inst.* 156.

SIMPLE CONTRACT. The word *simple* as applied to contracts is used in contradistinction to *special*; the former including all such contracts as are entered into either verbally or by writing *not sealed*, that is, by any instrument *not under seal* (as it is termed); the latter comprehending such contracts as are entered into by the parties in *writing* and subscribed to by their affixing their *seals* to the same; and which are thence termed contracts *under seal*. The former species of contract are called *simple* because the subject-matter of them is usually of a more *simple* or of a less complex nature. The latter species are called *special* from the same obvious reason, viz. that the subject-matter of them is usually of a more important or special character: hence also the reason for the former being

merely verbal or written, and the latter always being in *writing and sealed with the seal of the party* in testimony of his assent to the subject-matter of the contract. In point of *form* contracts are three-fold, by *parol*, by *specialty*, and by matter of *record*. All contracts are called parol, unless they be either specialties (that is, deeds under seal) or be matter of record. A written agreement not under seal is classed as a parol or simple contract, and is usually considered as such just as much as any agreement by mere word of mouth. For at common law there is no such class of contracts as contracts in writing contradistinguished from those by parol or specialty. If they are merely *written*, and *not* specialties, they are parol. Bonds, deeds, and the other contracts under seal, are called *specialties*; and being of a higher order than contracts by parol, require, as was before observed, greater solemnity and accuracy in order to render them valid. Contracts by matter of *record*, and which are the highest kind of contracts, are such as judgments, recognizance of bail, statutes merchant, &c., and other securities of the same nature, entered into with the intervention of some public authority, as before a court of record or a judge thereof, &c.—2 *Bl.* 464, 465, *and Chitty's notes.*

SIMPLE LARCENY. See tit. *Larceny.*

SIMPLEX JUSTICIARIUS. The puisne judges were anciently so styled.—*Cowel.*

SIMPLICITER. Simply, directly, immediately, as distinguished from inferentially or indirectly, &c. Ex. gr. "No doubt the notice (by a carrier that he will not be responsible for loss or damage to valuable goods, unless the bailor will pay a higher than ordinary rate of insurance for their carriage) operates as a limitation of liability; but the question is in what way? *simpliciter?* or as the foundation of a special contract?—*Per Parke, B. in Wilde* v. *Pickford*, 8 *Mee. & W.* 452.

SIMUL CUM (*together with*). Words used in indictments and declarations of trespass against several persons when some of them are known and others not known; as the plaintiff declares against A. B. the defendant *simul cum* C. D., E. F., and divers others unknown, for that they committed such a trespass.—2 *Lill. Abr.* 469; *Cunningham.*

SINE ASSENSU CAPITALI. A writ that lay in the case of a dean, bishop, prebendary, abbot, prior, or master of an hospital aliening lands held in the right of his house, without the consent of the chapter, convent, or fraternity; in which case his successor might have this writ.—*Cowel.*

SINE-CURE. When a rector of a parish neither resides nor performs duty at his benefice, but has a vicar under him endowed and charged with the cure thereof, this is termed a *sine-cure.* And when a church has fallen down, and the parish becomes destitute of parishioners, it is said to be a *sine-cure.*—*Wood's Inst.* 153.

SINE DIE (*without day*). When judgment is given for the defendant in an action, it is said *eat inde sine die* (let him go thereof without day), that is, he is discharged or dismissed out of court.—*Cowel*; 2 *Lill.* 220.

SINGLE BOND (*simplex obligatio*). A bond is called *single* when there is no condition added to it that if the obligor does some particular act the obligation shall be void, &c.—2 *Bl.* 340. See tit. *Bond.*

SINGLE DEMISE IN EJECTMENT. A declaration in ejectment may contain either one, or several demises; when it contains only the former, it is said to be a declaration with a *single* demise. It is essential to the maintenance of an action of ejectment, that he who is alleged as making the demise, should have the legal estate in the premises sought to be recovered, and hence, whenever a doubt exists as to whether the legal estate is in one of several persons, it is usual in framing the declaration to insert a demise by each, in which case the declaration is said to contain several demises; and the action is then entitled "John Doe on the *several* demises of A., B. and C.," naming the several lessors. See also tit. *Demise.*

SINGULAR. Each individually; every one; as opposed to all conjointly or together.

SITTINGS. See tit. *Banc;* also tit. *Nisi Prius.*

SITTINGS AT NISI PRIUS. See tit. *Nisi Prius.*

SITTINGS IN BANC. See tit. *Banc* or *Banco.*

SITTINGS PAPER. A paper published at the beginning of every term, by the order of the chief justice of each common law court, specifying the days on which each court will sit at nisi prius, to dispose of the cases ready for trial in the counties of London and Middlesex.

SIX CLERKS. Officers belonging to the Court of Chancery, whose duties consisted in receiving and filing all bills, answers, replications, and other records in all causes on the equity side of the Court of Chancery. They signed all copies of pleadings made by the sworn clerks and waiting clerks, after seeing that the originals were regularly filed. They examined and signed docquets of decrees and dismissions prepared for enrolment, and saw that the records and orders were duly filed and entered, &c. They had the care of all records in their office, which remained in their studies for six terms, for the sworn clerks and waiting clerks to resort to without fee, &c.—3 *Bl.* 443; *Smith, Chan. Pract.* 25.

SLANDER. The malicious defamation of a man either with respect to his character, trade, profession, or occupation, by word of mouth; the same as a libel is by *writing* or other significant characters.—3 *Chitty's Bl.* 123, *and seq.*

SLEEPING RENT. An expression frequently used in coal mine leases and agreements, and would seem to signify a *fixed* rent as distinguished from a render, or rent varying with the amount of the coals gotten. See *Jones* v. *Shears,* 6 *Mee. & W.* 429.

SLIP. Is that part of a police court which is divided off from the other parts of the court for the prisoner, or party charged with any offence, to stand in. See tit. *Dock.*

SMOKE FARTHINGS. See tit. *Fumage.*

SMOKE SILVER. The sum of sixpence annually paid to the sheriff in consideration of holding lands in some places. It also signified a certain sum of money paid to the ministers of divers parishes in lieu of tithe wood.—*Cowel.*

SOAK. See tit. *Soc.*

SOC (*soca*). Power or liberty of jurisdiction; whence the law Latin word *soca,* signifying a seignory enfranchised by the king with liberty of his holding a court of his *sockmen*

or *socagers*, i. e. his tenants, whose tenure is thence called *socage*.—*Bract. lib. 3, tract. 2*; *Cowel.*

SOCAGE (from the Fr. *soc*, a ploughshare). Socage tenure is the holding of lands in consideration of certain inferior services of husbandry to be performed to the lord of the fee. Socage in its most general and extensive signification seems to denote a tenure by any certain and determinate service. And in this sense it is by our ancient writers constantly put in opposition to chivalry or knight service, where the render was precarious and uncertain. Socage is of two sorts, *free* socage, where the services are not only certain, but honourable, and *villein* socage, where the services, though certain, are of a baser nature. Such as hold by the former tenure are also called in Glanvil and other authors by the names of *liberi sokemanni*, or tenants in free socage.—2 *Bl.* 79; *Cowel*; *Bract. lib. 2, c. 35.*

SOCAGERS, SOCMANS, SOKEMANS or SOCMEN. Those tenants who held their lands by *socage* tenure. The ceorls or husbandmen among our Saxon ancestors were of two sorts, one that hired the lord's outland, or tenementary land, like our farmers; the other that tilled or manured his inland or demesne (yielding work, not rent) and were therefore called his *soc-men* or plough-men. But after the conquest the proper *sockmanni* or *sokemanni* were those tenants who held by no servile tenure, but commonly paid their rent as a *soke* or sign of freedom to the lord, though they were sometimes obliged to customary duties for the service and honour of their lord.—*Cowel*; *Les Termes de la Ley.*

SODOMY. See tit. *Buggery.*

SOKE. See tit. *Soc.*

SOKEMANS. See tit. *Socagers.*

SOKEMANRIES. Socage tenures.—*Cowel.*

SOKE REEVE. Seems to have been the lord's rent gatherer in the *soke* or *soken*.—*Cowel.*

SOLE CORPORATION. See tit. *Corporation.*

SOLE TENANT (*solus tenens*). He who holds lands in his own right without any other being joined.—*Kitchin*, 134; *Cowel.*

SOLET ET DEBET. See tit. *Debet et Solet.*

SOLICITOR (*solicitator*). A legal practitioner in the Court of Chancery. The words *solicitor* and *attorney* are commonly used indiscriminately, although they are not precisely the same; an *attorney* being a practitioner in the courts of common law, a *solicitor* a practitioner in the courts of equity. Most attornies take out a certificate to practise in the Court of Chancery, and therefore become solicitors also; and, on the other hand, most, if not all, solicitors take out a certificate to practise in the courts of common law, and therefore become attornies also; and hence it is that the two words are commonly used as synonymous. See tit. *Attorney at Law.*

SOLVENDO ESSE. To be solvent, or to have wherewithal to pay.—*Cowel.*

SOLVERE PŒNAS. To pay the penalty or undergo the punishment inflicted for the offence.—*Tomlins.*

SOLVIT AD DIEM (*he paid on the day*). A plea pleaded by a defendant in an action of debt on bond, &c. to the effect that the money was *paid at*

the day limited or appointed.—1 *Arch. Pract.* 320, 330.

SOLUTIONE FEODI MILITIS PARLIAMENTI and SOLUTIONE FEODI BURGENS PARLIAMENTI. Writs by which knights of the shire and burgesses might recover their allowance if it were denied.—*35 H.* 8, *c.* 11; *Cowel.*

SON ASSAULT DEMESNE (*his own assault*). A plea which occurs in the actions of *trespass* and *trespass on the case*, and according to recent practice in *assumpsit*, by which the defendant alleges that it was the plaintiff's *own original assault* that occasioned the trespass for which he has brought the action, and that what the defendant did was merely in his own defence.—*Stephen on Pleading*, 186, 187; 3 *Bl.* 120.

SOUGH. A drain or watercourse. The channels or watercourses used for the purpose of draining mines are so termed; and those mines which are near to and lie within the same level and are benefited by any given *sough* are technically said to lie *within the title of that sough*. See *Arkwright* v. *Gell*, *5 Mee. & W.* 228, *per Abinger*, *L. C. B.*

SOUL-SCOT (*symbolum animæ*). In the laws of Canute a *mortuary* is so called.—2 *Bl.* 425.

SOUND IN DAMAGES. An action is technically said to *sound* in damages when it is brought not for the specific recovery of lands, goods, or sums of money (as is the case in real and mixed actions, or in the personal actions of debt and detinue), but for recovery of *damages* only, as in actions of covenant, trespass, &c. —*Stephen on Plead.* 116.

SOUTH BOYS. See tit. *Vert.*

SOWNE (from the Fr. *souvenu*, remembered). A word used in the exchequer in reference to *estreats*. Thus estreats that *sowne* not, are such as the sheriff cannot get, that is they are not leviable; and estreats that *sowne* are such as he may gather or levy.—*Cowel*; 4 *H.* 5, *c.* 7.

SPEAKERS OF THE HOUSES OF PARLIAMENT. Each house of parliament has an officer termed a *speaker*, who presides and manages the formality of the business. The speaker of the House of Lords is the lord chancellor, or keeper of the king's great seal, or any other appointed by the king's commission; and if none be so appointed, the house of lords (it is said) may elect. The speaker of the house of commons is chosen by the house, but must be approved by the king.—1 *Bl.* 181.

SPEAKER OF THE COMMONS. The term speaker, as used in reference to either of the houses of parliament, signifies the functionary acting as chairman. In the commons his duties are to put questions, to preserve order, and to see that the privileges of the house are not infringed; and in the event of the numbers being even on a division, he has the privilege of giving the casting vote.

SPEAKER OF THE LORDS. The speaker of the lords is the Lord Chancellor or the Lord Keeper of the Great Seal of England, or if he be absent the lords may choose their own speaker. "It is singular," says Mr. May in his Treatise on the Privileges, &c. of Parliament, "that the president of this deliberative body is not necessarily a member. It has frequently happened that the Lord Keeper has officiated for years as speaker without having been raised to the peerage; and on 22nd November, 1830, Mr. Brougham sat on the woolsack as speaker, being at

that time Lord Chancellor, although his patent of creation as a peer had not yet been made out." The duties of the speaker of the lords are principally confined to putting questions, and the Lord Chancellor has no more to do with preserving order than any other peer.

SPECIAL ACCEPTANCE OF A BILL OF EXCHANGE. Where the acceptor makes the bill payable at a particular place "and not elsewhere;" it is so termed. This is also sometimes termed a restrictive special acceptance as distinguished from one payable at a particular place only, without the additional words "and not elsewhere." See tit. *Acceptance.*

SPECIAL BAIL. See tit. *Bail.*

SPECIAL CASE. When on a trial a difficulty in point of law arises, the jury may, instead of finding a special verdict, find a general verdict for the plaintiff, subject to the opinion of the judge or the court above on what is termed a *special case;* that is, to a written statement of all the facts of the case, drawn up for the opinion of the court in bank, by the counsel and attornies on either side, under correction of the judge at *nisi prius.* The party for whom the general verdict is so given, is in such case not entitled to judgment till the court in bank has decided on the special case; and according to the result of that decision the verdict is ultimately entered either for him or his adversary. It has also been provided by 3 & 4 Wm. 4, c. 42, s. 25, that where the parties in an action on issue joined can agree on a statement of facts, they may by order of a judge draw up such statement in the form of a *special case* for the judgment of the court without proceeding to trial.—*Stephen on Plead.* 102; 1 *Arch. Pract.* 471.

SPECIAL CONTRACT. See tit. *Simple Contract.*

SPECIAL DAMAGE. The damages which a plaintiff seeks to recover are either *general* or *special.* General, are such as the law *implies* or presumes to have resulted from the wrong complained of. *Special,* are such as really and in fact resulted but are *not implied* by law, and are either superadded to general damages arising from an act injurious in itself, as where some particular loss arises from the uttering of slanderous words actionable in themselves; or are such as arise from an act indifferent and not actionable in itself, but injurious only in its consequences; as where words become actionable only by reason of some special or actual damage having resulted from the uttering them. Whenever the damages sustained by a party have not *necessarily* resulted from the act complained of, and consequently are not *implied* by law, the plaintiff must, in order to prevent surprise on the defendant which otherwise might ensue on the trial, state with particularity in his declaration the actual or special damage which he has sustained. —8 *T. R.* 133; 1 *Ch. Pl.* 395, 396, *6th ed.*

SPECIAL DEMURRER. See tit. *Demurrer.*

SPECIAL ISSUES. The issues produced upon special pleas, as being usually more specific and particular than those of *not guilty, never indebted,* &c. are sometimes described in the books as *special issues,* by way of distinction from the others, which are called *general issues,* the latter term being also applied not only to the issues themselves, but to the pleas which tendered and produced them.—*Steph. Pl.* 189, *5th ed.; Co. Litt.* 126 *a; Heath's Maxims,* 53; *Com. Dig. Pleader,* (*R.* 2).

SPECIAL JURY. Is a jury composed of individuals above the rank of ordinary freeholders; and is usually summoned to try questions of greater importance than those usually submitted to common juries.—*3 Bl.* 357; see tit. *Jury*.

SPECIAL OCCUPANT. See tit. *Occupancy*.

SPECIAL PAPER. A court paper containing a list of special cases and demurrers set down therein for argument.

SPECIAL PLEADER. See tit. *Special Pleading*.

SPECIAL PLEADING. When the allegations (or *pleadings* as they are called) of the contending parties in an action, are not of the *general* or ordinary form, but are of a more complex or *special* character, they are denominated *special pleadings*: and when a defendant pleads a plea of this description (i. e. a *special plea*) he is said to plead *specially*, in opposition to pleading the *general issue*. These terms have given rise to the popular denomination of that science which, though properly called *pleading*, is generally known by the name of *special pleading*. Hence also the denomination of *special pleader* as applied to those learned persons who are employed in drawing and framing special pleadings. These, it may be as well to observe, are mostly gentlemen who have studied for more than three years at one of the inns of court, and intend at some future period to engage in the more complicated and important avocations of a barrister.—*Stephen on Plead.* 31, 186; *Smith's Action at Law*, 17.

SPECIAL RULES. The grounds upon which certain rules are granted are subject to so little variation, and are so well understood, that in practice they are obtained from the proper officer of the court, upon application by the party or his attorney, and without any motion, actual or supposed. In other cases, the motion need not be actually made in court, but it is supposed to be made, and the proper officer draws up the rule on the production of a brief, or motion paper signed by counsel: the rules granted without any motion in court, or when the motion is only assumed to have been, and is not actually made, are called *common rules*; while the rules granted upon motion *actually* made to the court in term, or upon a judge's order in vacation, are termed *special rules*.—*Bagl. Prac.* 279; 2 *Ch. Arch. Pr.* 1184.

SPECIAL SIMILITER. See title *Similiter*.

SPECIAL TRAVERSE. Is that peculiar form of traverse or denial, in pleading, by which the party traversing seeks to explain or qualify his denial instead of putting it, as by a common traverse he would, in a direct and absolute form. And this he is enabled to do by first alleging new affirmative matter, which is called the *inducement*, and then by adding a distinct and formal denial of such portions of the adverse pleading as support the adversary's case. This negative part is, in the language of pleading, termed the *absque hoc* (*without this*), those being the words with which this portion of the plea commences, and the whole is finished by a conclusion to the country. The *inducement*, or introduction of new affirmative matter, is usually employed for the purpose of avoiding some rule of law which would prohibit a plain and simple denial of the adversary's allegation, or sometimes for the purpose of raising a question of law at once upon the pleadings, and the negative part or *absque hoc* is generally rendered ne-

cessary by the *inducement*, which by itself would constitute an indirect (or argumentative) denial of the preceding statement, and would be at variance with the rules of pleading against argumentativeness. This form of traverse is now comparatively little employed.—*Steph. Plead.* 193 to 218, *5th edit.*; 3 *Chit.* 908, *6th edit.*; *Brudnell* v. *Roberts*, 2 *Wils.* 143; *Palmer* v. *Ekyns*, *Lord Raym.* 1550; *Bac. Abr. Pleas, &c.* (*H.* 1); *Reg. Gen. Hil. Term*, 4 *Will.* 4.

SPECIAL VERDICT. See tit. *Verdict.*

SPECIALTY. See tit. *Simple Contract.*

SPECIE. As applied to a contract signifies specifically, strictly, or according to its specific terms. Thus, performing a contract *in specie*, means performing it strictly, or according to its very terms. As applied to things, it signifies individuality or identity. Thus, if I bequeath to A. a named or specified picture of Raphael's, such bequest would only be satisfied by delivery to A. of the specific picture named, and not by delivery to him of *any* work of that master, nor by giving him the *value* of the picture bequeathed; and in this case A. would be said to be entitled to the delivery of the picture *in specie*, i. e. in kind. Whether a thing is due *in genere* or *in specie* depends in each case on the will of the transacting parties. If a thing be designated only by its *kind*, as e. g. any house whatever, or any of my houses, any cask of wine, or any cask of the vintage of 1834 in my cellar, it may be furnished *in genere*. But if the thing be designated *individually*, e. g. my house, No. 200, Waverley Place, or my five year old bay saddle horse, it is not then *generic*, but must be furnished or returned *in individuo*. The practical distinction between the two is, that he who has a right or an obligation with respect to a thing *specifically* designated, cannot require or furnish any other than the very thing itself; whereas in the case of a thing which is designated *generically*, the party obliged has the choice of giving which of the species he will, as the other party has no right to any one in particular.—*Mackeldy's Civ. Law, by Kaufman*, 152.

SPECIFIC LEGACIES. Such legacies as are *specified* or particularized by a testator in his will; as the bequest of a particular diamond ring, or a particular house, &c. It is used in contradistinction to a *general* legacy, which is expressive of such as are pecuniary or merely of quantity, as a bequest of 100*l.* &c.; for in this instance no particular or specific 100*l.* is bequeathed, but only a sum of money *to that amount*; whereas in the former instance the diamond ring and the horse are *specifically* bequeathed and cannot be supplied by another article of equal value.—*Toll. Ex.* 300, 301.

SPECIFIC PERFORMANCE. When a party has sustained damage or injury from the breach or non-performance of any contract, &c., he may either have recourse to a court of common law to obtain *recompense in damages*, or he may resort to a court of equity, which will compel the party to repair the injury, by performing the terms of the contract in *specie*, as it is termed, i. e. specifically or according to the specifications it contains: and this performing the terms of a contract in specie is called *specific performance.*

SPEEDY EXECUTION. Is an execution which by the direction of the judge at nisi prius issues forthwith, or on some early day fixed upon by the judge for that purpose after the trial of the action. By stat. 1 Will. 4,

c. 7, s. 2, in all actions brought in the courts of law at Westminster, "it shall be lawful for the judge before whom issue joined in any such action shall be tried, in case the plaintiff or demandant therein shall become nonsuit, or a verdict shall be given for the plaintiff or demandant, defendant or tenant, to certify under his hand on the back of the record, at any time before the end of the sittings or assizes, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, &c." This certificate is never granted where a material point has arisen at the trial, and upon which it is fair that the unsuccessful party should have an opportunity to take the opinion of the court.

SPIGURNEL. The persons who enjoyed the office of sealer of the writs were so termed, it is supposed from the circumstance of the person who was first appointed to that office being named *Galfridus Spigurnel.*—*Cowel.*

SPIRITUAL CORPORATIONS. See tit. *Corporation.*

SPIRITUAL COURTS. See title *Courts Ecclesiastical.*

SPIRITUALITIES OF A BISHOP. Those profits which a bishop receives in his ecclesiastical character, as the dues arising from his ordaining and instituting priests, prestation money, and such like, in contradistinction to those profits which he acquires in his temporal capacity as a baron and lord of parliament, and which are termed his *temporalities*, consisting of certain lands, revenues and lay fees, &c.—*Staundf. Pl. Cor.* 132; *Cowel.*

SPOLIATION (*spoliatio*). An injury done by one clerk or incumbent to another, in taking the fruits of his benefice without any right to them, but under a pretended title. It also seems to be used for a suit brought to recover the fruits of a church, or even the church itself, by one incumbent against another, when they both claim by one patron, and the right of patronage is not called in question; as if a patron first presents A. to a benefice, who is instituted and inducted thereto; and then upon pretence of a vacancy, the *same* patron presents B. to the same living, and he also obtains institution and induction. Now if the fact of the vacancy be disputed, then that clerk who is kept out of the profits of the living, whichever it be, may sue the other in the spiritual court for *spoliation*, or taking the profits of his benefice; and it shall there be tried whether the living were or were not vacant, upon which the validity of the second clerk's pretensions must depend.—*Les Termes de la Ley*; 3 *Bl.* 91; *F. N. B.* 36.

SPOUSE-BREACH. Adultery or incontinence, as opposed to simple fornication.—*Cowel.*

SPRINGING or CONTINGENT USES. See tit. *Use.*

STALE AFFIDAVIT. One sworn above a year.—See *Ramsden* v. *Maugham*, 2 *C. M. & R.* 634; 4 *Dowl.* 403.

STALLAGE (*stallagium*). A toll or duty payable for the liberty of erecting a *stall* in a fair or market.—*Palm. Rep.* 77; *Com. Dig. tit. Market* (*F.* 2.); *Brady on Bor. App. p.* 12.

STAMP DUTIES. A branch of the royal revenue, consisting of a tax imposed on all parchment and paper, whereon any legal proceedings or private instruments of almost any nature whatsoever are written; and also upon licenses, almanacks, news-

papers, advertisements, cards, &c.—1 *Bl.* 323.

STANDING ORDERS. The rules adopted by the houses of parliament for the permanent guidance and order of their proceedings, are called *standing orders*, and are contradistinguished from the sessional orders by the fact that the former, unless rescinded by a special vote of the house, continue in force not only from one session to another, but from one parliament to another; while the latter are intended to last only during the session in which they are made. In the House of Lords every new standing order is added to the "The Roll of Standing Orders," carefully preserved and published from time to time. In the Commons there is no authorized collection of standing orders except in relation to private bills.—*May's Treatise.*

STANNARY COURTS. Courts in Devonshire and Cornwall for the administration of justice among the miners and tinners; and are held before the lord warden and his substitutes, by virtue of a privilege granted to the workers of the tin mines there, to sue and be sued in their own courts only, in order that they may not be drawn away from their business by having to attend law suits in distant courts.—*Bac. Ab. tit. Courts of the Stannaries; 3 Bl.* 79.

STAPLE (*stapulum*). See tit. *Statute Staple.*

STAR (*starrum*) contracted from the Hebrew *shetar*, which signifies a deed or contract). All the deeds, obligations and releases of the Jews were anciently called *stars.*—*Cowel.*

STAR CHAMBER (*camera stellata*). See tit. *Court of Star Chamber.*

STATE OF FACTS. When a master in chancery is directed by the Court of Chancery to make an inquiry or investigation into any matter arising out of a suit, and which cannot conveniently be brought before the court itself, each party in the suit carries in before the master a statement showing how the party bringing it in represents the matter in question to be; and this statement is technically termed a *state of facts*, and forms the ground upon which the evidence is received; the evidence being, in fact, brought by one party or the other to prove his own or disprove his opponent's *state of facts.*—*Gray's Ch. Prac.* 109, 110.

STATING PART OF A BILL IN CHANCERY. See tit. *Bill*, in the outline of a suit in equity, at the end of the volume.

STATUTE (*statutum*). The statutes are the written laws of the kingdom, made by the king's majesty by and with the advice and consent of the lords spiritual and temporal and commons in parliament assembled. They are either *general* or *special*, *public* or *private*. A general or public act is a universal rule that regards the whole community; and of this the courts of law are bound to take notice judicially and *ex officio*, without the statute being specially pleaded or formally set forth by the party who claims advantage under it. Special or private acts are rather exceptions than rules; being those which only operate upon particular persons and private concerns; such as the Romans entitled *senatûs decreta*, in contradistinction to the *senatûs consulta*, which regarded the whole community: and of these (which are not promulgated with the same notoriety as the former) the judges are not bound to take notice, unless they be formally shown and pleaded. Thus, for instance, the stat. 13 Eliz. c. 10, to prevent spiritual persons from

making leases for longer terms than twenty-one years, or three lives, is a public act; it being a rule prescribed to the whole body of spiritual persons in the nation. But an act to enable the Bishop of Chester to make a lease to A. B. for sixty years, is an exception to this rule; it concerns only the parties and the bishop's successors, and is, therefore, a private act.—1 *Bl.* 85, 86.

STATUTE-MERCHANT. A writing in the nature of a bond, which was introduced in the reign of Edward the First, for the purpose of allowing lands to be charged with the payment of debts contracted in trade, which was contrary to all feodal principles. It is called *statute-merchant*, because usually made between *merchants*, and according to the forms expressly provided by *statutes*, which direct both before what persons, and in what manner it ought to be made. It is somewhat in the nature of what is termed a *vivum vadium*, or *living pledge*, by which a man borrows a sum of money of another, and grants him an estate to hold till the rents and profits shall repay the sum so borrowed. A *statute-merchant* may therefore be said to be a security for a debt acknowledged to be due, and by which not only the body of the debtor may be imprisoned, and his goods seized in satisfaction of the debt; but also his lands may be delivered to the creditor till out of the rents and profits of them the debt may be satisfied; and during such time as the creditor so holds his lands he is called a *tenant by statute-merchant*, and such creditor's estate or interest in them during that period is termed an *estate by statute merchant*. — 4 *Bl.* 426; 2 *Bl.* 160; *Les Termes de la Ley.*

STATUTE OF LIMITATIONS. See tit. *Limitation.*

STATUTE-RUN. A debt due to a creditor is sometimes said to be *statute-run*, when his legal remedy for its recovery is barred or shut out by the Statute of Limitations. See tit. *Limitation.*

STATUTE-STAPLE. A security for a debt acknowledged to be due before the mayor of the *staple*, that is, the grand mart for the principal commodities or manufactures of the kingdom, formerly held by act of parliament in certain trading towns. It is called *statute-staple*, because entered into before the mayor of such *staple*, and made according to certain forms prescribed by *statute*. This security, which is in the nature of a bond given by the debtor to the creditor, is very similar to a *statute-merchant*, and was originally permitted only among traders for the benefit of commerce, and by which not only the body of the debtor may be imprisoned, and his goods seized in satisfaction of the debt, but also his lands may be delivered to the creditor till out of the rents and profits of them the debt may be satisfied; and during such time as the creditor so holds the lands, he is called *tenant by statute-staple*, and his estate or interest in the lands during that period is called *an estate by statute-staple*.—2 *Bl.* 160; *Les Termes de la Ley.*

STATUTE OF JEOFAILS. See tit. *Jeofaile.*

STATUTES AT LARGE. Are an authentic collection of the various statutes which have been passed by the British parliament from very early times up to the present day. The oldest of these now extant, and printed in our statute book, is the famous *Magna Charta*, as confirmed in parliament 9 Henry III., though doubtless there were many acts before that time, the records of which are now lost, and whose provisions

are perhaps in the present day currently received for the maxims of the old common law or custom of the realm. The statutes from *Magna Charta* down to the end of Edward II. (including also some which, because it is doubtful to which of the three reigns of Henry III., Edward I. or Edward II. to assign them, are termed *incerti temporis*) compose what have been called the *vetera statuta;* those from the beginning of the reign of Edward III. being contradistinguished by the appellation of the *nova statuta.*—*Dwarris on Stat.* 626; 1 *Steph. Bl.* 66.

STATUTO MERCATORIO. A writ that lay for imprisoning him who had forfeited a bond called *statute-merchant* until the debt were satisfied.—*Reg. Orig.* 146; *Cowel.*

STATUTO STAPULÆ. A writ that lay for imprisoning and seizing the lands and goods of him who had forfeited a bond called a *statute-staple.*—*Cowel.*

STATUTUM DE LABORARIIS. A judicial writ, that lay for the apprehending of such labourers as refused to work according to the statute.—*Reg. Jud.* 27; *Cowel.*

STATUTUM SESSIONUM. The *statute sessions,* otherwise called *petit sessions,* was a meeting in every hundred of all the shires in England, where by custom they had been used, to which the constables and others, both householders and servants, repaired, for the debating of differences between masters and servants, for the rating of servants' wages, &c.—1 *Eliz. c.* 5; *Cowel.*

STEALING. See tit. *Larceny.*

STEALING AN HEIRESS. See tit. *Abduction.*

STET PROCESSUS. Is an entry on the roll in the nature of a judgment, that by consent of the parties all further proceedings shall be stayed (i. e. *that the process may stand*); and it is one of the ways by which a suit may be put an end to by an act of the party, as distinguished from a termination of it by judgment, which is the act of the court.—*Lush's Prac.* 771 to 773; *Chitty's Forms,* 618; 2 *Chitty's Arch.* 1079; 3 *D. P. C.* 648. See also tit. *Judgment.*

STEWARD (*senescallus*). This word is compounded of the Saxon *steda,* i. e. room, place or stead; and *weard,* i. e. a ward or keeper; so that it signifies as much as a man appointed in my place or *stead,* and always signifies a principal officer within his jurisdiction. The greatest, however, of these was the Lord High Steward of England, whose functions were of a very important nature, having, next under the king, the supervision and regulating the administration of justice, and most other affairs of the realm, both of a civil and military nature. There is also an important officer, called a *steward of a manor,* who has the general management of all forensic matters connected with the manor of which he is steward; this officer stands in much the same relation to the lord of the manor as an under-sheriff does to the sheriff.—3 *Bl.* 38; *Cowel.*

STEWARTRY. In the Scotch law seems to be synonymous with the English word *county.* Thus, "any shire or *stewartry* in Scotland," is used in the 12th section of 5 & 6 Vict. c. 35 (the Income and Property Tax Act); and by 1 Vict. c. 39, it is enacted that the word "county" occurring in any future or existing act, shall comprehend and apply "to any *stewartry* in Scotland, excepting where otherwise specially provided, or where there is anything in the subject or

context repugnant to such meaning or application."—See *Bell's Sc. Law Dict. tit. County.*

STINT, *Common without.* Common without *stint* is the right of commoning or feeding an *unlimited* number of cattle on the common, and that throughout the year, without limitation of time. The notion, however, of this species of common is said to be exploded, as a right of common without stint cannot exist in law.—2 *Chit. Bl.* 34, *n.* 32.

STIRPES. Taking property by representation is called succession *per stirpes*, in opposition to taking it in one's own right, or as a principal, which is termed *per capita.* It is called succession *per stirpes*, because according to the *roots*; that is, all the branches inherit the same share that their *root* whom they represent would have done.—2 *Bl.* 217; see also tit. *Capita, Distribution per.*

STOCKLAND and BONDLAND. Two kinds of copyhold estates in the manor of Wadhurst, in Sussex, so called, and descendible by custom in several manors. Thus, if a man be first admitted to stockland and afterwards to bondland, and die seised of both, his eldest son and heir shall inherit both estates; but if he be admitted first to bondland and afterwards to the other, and then died seised of these, then his youngest son shall inherit; but bondland held alone descends to the youngest son. —2 *Leon.* 55; *Tomlins.*

STOPPAGE IN TRANSITU. The meaning of this phrase may be collected from the following observations. As soon as a bargain is struck, the property of the goods is transferred to the vendee, and that of the price to the vendor; but the vendee cannot take the goods until he tenders the price agreed on; and it has long been settled that delivery of the goods to an agent of the vendee (and for this purpose common carriers, packers, and wharfingers are considered to stand in that character) is for most purposes the same as a delivery to the vendee himself. But this species of delivery affords a security to the vendor upon credit, which does not exist where the delivery is actually made to the vendee himself; for if the vendor discover that the vendee is insolvent, or has become bankrupt, he may seize upon the goods so sold upon credit, and delivered into the hands of such carrier, &c. at any time before their actual and complete delivery to the vendee; and this branch of the law, which so entitles a vendor to *stop* or prevent his goods being so delivered, is called *stoppage in transitu.*—2 *Chitty's Bl.* 448, *and n.* 16.

STRANGERS. The persons bound by a fine are *parties*, *privies*, and *strangers.* The parties are either the cognizors or cognizees; the privies are such as are in any way related to the parties who levy the fine, and claim under them by any right of blood or other right of representation; the *strangers* are all other persons in the world except only the parties and privies. In its general legal signification it is opposed to the word *privy.* Those who are in no way parties to a covenant, nor bound by it, are also said to be *strangers* to the covenant. See 2 *Bl.* 356.

STRAY. See tit. *Estray.*

STRIKING A DOCKET. See tit. *Docket, Striking a.*

STRIKING A JURY. Is the act of selecting or nominating a jury of twelve men out of the whole number returned as jurors on the panel. This, in common jury cases, is usually done by the associate of the court, at

the trial, putting all their names in a box, and then drawing out twelve promiscuously. The phrase, however, seems more commonly used with regard to a *special* jury, in which the mode of proceeding is somewhat varied. The proper officer of the court appoints a time and place for "striking the special jury," at which the under-sheriff or his agent and the parties attend. The numbers from the jurors' list are then put into a box, and the forty-eight names corresponding to the forty-eight numbers drawn by each party alternately, and this number is afterwards reduced, and constitutes the special jury. — *Lush's Pr.* 471, 477; *St.* 6 *Geo.* 4, *c.* 50, *ss.* 30, 32, 34, 37; 3 *Geo.* 2, *c.* 25, *s.* 17; 3 *Bl. Com.* 358.

STRIP (*strepitus*). Mutilation, wasting, &c.—See tit. *Estrepe.*

STRONG HAND, (*manu forti*). The words with "strong hand" (*manu forti*), imply a degree of criminal force, and much more than is meant by the words with "force and arms" (*vi et armis*). The statutes relating to forcible entries use these words, "with a strong hand," as describing that degree of force which makes an entry or detainer of lands criminal, and entitles the prosecutor, under circumstances, to restitution and damages; whereas the words "vi et armis," *with force and arms*, are mere *formal* words in the action of trespass, and if issue were taken upon them the plaintiff would not be bound to prove any force.—*Rex* v. *Wilson*, 8 *Term Rep.* 362, 363; *per Lawrence*, *J. Lowe* v. *King*, 1 *Saund.* 81; *Sty.* 135; *Harvey* v. *Brydges*, 14 *Mee. & W.* 440, *per Parke*, *B.*

STUFF GOWN. Is the professional robe worn by barristers of the outer bar, viz. those who have not been admitted to the rank of Queen's counsel. See tit. *Silk Gown.*

SUBINFEUDATION. The system which the feudal tenants introduced of granting smaller estates out of those which they held of their lord, to be held of themselves as inferior lords; and as this system was proceeding downwards *ad infinitum*, and deprived the lords of their feudal profits of wardships, marriages, and escheats, which fell into the hands of these mesne or middle lords, who were the immediate superiors of him who occupied the land, a provision was made in the thirty-second chapter of *Magna Charta*, 9 Hen. 3, prohibiting any man either to give or sell his land without reserving sufficient to answer the demand of his lord.—2 *Bl.* 91.

SUBMARSHAL (*submarescallus*). An officer in the Marshalsea, sometimes called *under-marshal.* He was deputy to the chief marshal of the king's house, commonly called the knight marshal, and had the custody of the prisoners there. — *Cromp. Jurisd.* 104; *Cowel.*

SUBMISSION. See tit. *Submission to Arbitration.*

SUBMISSION BOND. See tit. *Submission to Arbitration.*

SUBMISSION TO ARBITRATION. The submitting matters in difference between parties to the award or decision of an arbitrator; and the *bond* by which the parties agree so to submit their matters to arbitration, and by which they bind themselves to abide by the award of the arbitrator, is commonly called the *submission bond.*—2 *Arch. Pract.* 12, 39.

SUBORNATION OF PERJURY. The offence of procuring another to take such a false oath as would constitute perjury in the principal. To render the offence of subornation of perjury complete either at com-

mon law or on the statute, the false oath must be actually taken, and no abortive attempt to solicit will bring the offender within its penalties.—4 *Bl.* 137; 3 *Mod.* 122.

SUBPŒNA. A writ by which persons are commanded to appear at a certain place, at a certain time, *under a penalty* of 100*l.* This writ is used both in the courts of Chancery and in the courts of common law, and is applied to various purposes. The subpœna most frequently in use in Chancery proceedings is that by which parties are commanded to appear in court and answer the plaintiff's bill, and which is thence called a *subpœna to appear and answer.* There are also other subpœnas used in Chancery proceedings, which however it would be of little use to particularize, as they are of the same nature as the above, though applied to effect different objects. The subpœnas of most frequent occurrence in common law proceedings are, 1. Those used for the purpose of compelling witnesses to attend in court to give their testimony on a trial, and which are thence called *subpœnas ad testificandum:* 2. Those used for the purpose, not only of compelling witnesses to attend in court, but also requiring them to *bring with them* books or documents which may be in their possession, and which may tend to elucidate the subject-matter of the trial, and which are thence called *subpœnas duces tecum.*

SUBSCRIBING WITNESS. He who witnesses or attests the signature of a party to an instrument, and in testimony thereof *subscribes* his own name to the document.

SUBSEQUENT CONDITIONS. See tit. *Condition.*

SUBSIDY (*subsidium*). An extraordinary grant in the nature of a tax, aid, or tribute granted by parliament to the king to meet the exigencies of the state.—1 *Bl.* 307.

SUBTRACTION. Is the offence of withholding (or *withdrawing*) from another man what by law he is entitled to. There are various descriptions of this offence, of which the principal are as follow:—

1. *Subtraction of Suit and Service*, which is a species of injury affecting a man's real property, and consists of a withdrawal of (or a neglect to perform or pay) the fealty, suit of court, rent, or customary services, all of which in feudal times, and some of which at the present day, are reserved by the owner of the land to himself when he lets or leases it to another. For this neglect of duty on the part of the tenant the law gives the landlord the peculiar remedy of *distress;* but the other remedies formerly in use for rent in arrear, and for subtraction of suit and service, were abolished by the st. 3 & 4 Will. 4, c. 27, which put an end to almost all kinds of real actions; the only actions which now lie for rent being of the personal class. But for the neglect to perform any customary service, such as the neglect or refusal to grind corn at the landlord's mill, an action on the case will lie to compensate the party injured in damages.—3 *Stephen, Bl.* 508; 2 *B. & C.* 827; *Finch, L.* 285.

2. *The Subtraction of Tithes* is the withholding from the parson or vicar, whether the former be a clergyman or a lay appropriator, the tithes to which he is entitled, and this is an offence cognizable in the ecclesiastical courts; for though those courts have no jurisdiction to try the *right* of tithes (unless between spiritual persons), yet where only the fact, whether or not the tithes allowed to be due are really *subtracted* or withdrawn, is in dispute, this is a personal transient injury, for which the remedy (viz.

the recovery of the tithes or their equivalent) may properly be there had. But any dispute as to *tithes* in their original form is now rare, that species of property having been in the great majority of parishes already commuted into corn rent charge, under the provisions of the Tithe Commutation Act (6 & 7 Will. 4, c. 71).—2 *Roll. Abr* 309; *St.* 2 *&* 3 *Edw.* 6, *c.* 13; 13 *Edw.* 1, *st.* 4; 9 *Edw.* 2; *53 Geo.* 3, *c.* 127; 2 *Inst.* 250.

3. *Subtraction of Conjugal Rights* is the withdrawing or withholding by a husband or wife of those rights and privileges which the law allows to either party. This is an offence peculiarly within the cognizance of the ecclesiastical courts, and the party injured seeks redress by bringing a suit to recover those rights of which he or she has been deprived, called a suit for the *Restitution of Conjugal Rights*. Thus, where the husband leaves his wife, and lives separate from her, without any sufficient reason, the ecclesiastical jurisdiction will compel him to return to cohabitation.

4. *Subtraction of Legacies* is the withholding or detaining of legacies by an executor; and as such act deprives the legatees of the benefit which the law gives to them, and which the testator intended them to have, it is an offence of which the Prerogative, or other courts which have a testamentary jurisdiction, take notice. With them, however, the courts of equity hold a concurrent jurisdiction.

5. *Subtraction of Church-rates* is the last and most familiar class of "subtraction," and consists in the refusal to pay the amount of rate at which any individual parishioner has been assessed for the necessary repairs of the parish church; and this, like the other species of this offence, is cognizable by the courts ecclesiastical.—*Rogers's Ecc. Law*, 983—999; 1 *Curt.* 372; 4 *Ad. & El.* 433; 1 *Curt.* 345; 12 *Ad. & El.* 233, 265; 1 *Atk.* 516; 2 *Mad.* 351.

SUBTRACTION OF CHURCH-RATES.—See tit. *Subtraction.*

SUBTRACTION OF CONJUGAL RIGHTS. The injury of subtraction consists in a husband or a wife living separate from the other without any sufficient reason. See tit. *Subtraction.*

SUBTRACTION OF LEGACIES. The withholding or detaining of legacies. See tit. *Subtraction.*

SUBTRACTION OF RENTS AND SERVICES. The withholding or not observing them; as by neglecting to swear fealty, to do suit of court, or to render the rent or service reserved. See tit. *Subtraction.*

SUBTRACTION OF TITHES. The withholding of tithes. See tit. *Subtraction.*

SUE (from Lat. *sequor*, to follow). To prosecute by law; to commence legal proceedings against a party. It is applied almost exclusively to prosecuting a *civil* action against one. He who has had process issued against him is said to have been *sued.*

SUFFERANCE. A tenant at sufferance is he who holds lands or tenements by the implied permission of the owner. Thus, if a man takes a lease for a year, and after the year is expired continues to hold the premises without any fresh leave from the owner, such man is called a *tenant at sufferance*, and the estate which he so continues to hold is then called an *estate at sufferance*.—2 *Bl.* 150.

SUFFERING A RECOVERY. A

recovery, as has been explained under that title, was a mode of conveyance formerly in use, which was effected by the party wishing to convey the land suffering a fictitious action to be brought against him by the party to whom the land was to be conveyed (who was called the demandant), and allowing the demandant to *recover* a judgment against him for the land in question. The vendor, or conveying party, in thus assisting or permitting the demandant so to recover a judgment against him was thence technically said to "*suffer a recovery.*" See also tit. *Recovery*; also *5 Cru. Dig.* 285, *3rd ed.*

SUFFRAGAN (from *suffragari*, to help or assist). Bishops who in former times were appointed to supply the place of others during their absence on embassies or other business were so termed. They were consecrated as other bishops were, and were anciently called *chorepiscopi*, or bishops of the country, in contradistinction to the regular bishops of the city or see. The practice of creating suffragan bishops has long been discontinued.—*Godol. Ab.* 30; 1 *Burn's Ecc. Law*, 246, *and seq.*

SUGGESTIONS, *Entry of, on the Roll.* In actions at law, whenever by the provision of an act of parliament or otherwise, a person not a party to the record is to be affected by a judgment, or where the judgment upon the record is to be such as would not be ordinarily warranted by the previous proceedings on the record, the proper course is to enter a *suggestion* on the roll, so that the party to be affected by it may demur if he thinks the facts *suggested* are insufficient in point of law; or to plead if he means to deny them. As where there are two or more plaintiffs or defendants, and one or more of them die, the action will not be abated, but such death being *suggested* on the record, the action may be continued by or against the survivors. A *suggestion* is also entered upon the record where a person not a party to the action is to be affected by the judgment, under the provisions of an act of parliament (as the members of a company by a judgment against the secretary), or where the judgment is to be such as would not be ordinarily warranted by the proceedings on the record, or where the sheriff to whom the venire is to be awarded is interested in the suit, or where by the order of the court the venue in a local action is removed to another county, and in many similar cases, where the circumstances involve a deviation from the ordinary course of proceeding.—2 *Ch. Arch. Pr.* 1170; 1 *B. & Ad.* 704; 9 *M. & W.* 3; 1 *Salk.* 152; *5 M. & S.* 144; *St. 3 & 4 Will. 4, c.* 42.

SUICIDE. See tit. *Felo de se.*

SUIT (*secta*). This word has various significations. As applied to proceedings at law it originally signified a number of persons or witnesses which a plaintiff produced to establish the truth of the allegations made in his declaration; and this practice of producing a *secta* or *suit* gave rise to the very ancient formula almost invariably used at the conclusion of a declaration, *et inde producit sectam* (and therefore he brings his *suit*), and thus, though the actual production has for many centuries fallen into disuse, still the formula remains. The other meanings to which the word *suit* is applied will be found under the following titles.—*Stephen on Pleading*, 461.

SUIT AT LAW. See tit. *Action.*

SUIT IN EQUITY. See the *Outline of a Suit in Equity* at the end of the volume.

SUIT OF COURT. See tit. *Secta Curiæ.*

SUIT OF THE KING'S PEACE (*secta pacis regis*). The pursuing a man for breach of the *king's peace* by treasons, insurrections, or trespasses. —*Cowel.*

SUIT SILVER. A small rent or sum of money paid by the freeholders of some manors to excuse their appearance at the court of their lord. —*Cowel.*

SUITORS' FUND IN CHANCERY. Is a fund standing in the name of the accountant-general of the Court of Chancery, and arising out of the interest which accrues from the large sums of money paid into the name of the accountant-general by the suitors of that court. There appear to be two principal accounts kept at the Bank of England by the accountant-general of Chancery with regard to the Suitors' Fund. The one is intituled "Account of the monies placed out for the benefit and better security of the suitors of the High Court of Chancery," and the other, "Account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery." In cases of poverty the court will sometimes allow the costs of a defendant's contempt to be paid out of the "Suitors' Fund."—1 *Daniell, Ch. Pr.* 673.

SUMMARY CAUSES. See tit. *Plenary Causes.*

SUMMARY CONVICTIONS. Summary proceedings directed by several acts of parliament for the conviction of offenders, and the inflicting of certain penalties created by those acts of parliament. In these proceedings there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed to be his judge.—4 *Bl.* 280.

SUMMONER (*summonitor*). A petty officer or apparitor who cited delinquents to appear at a certain time and place to answer any charge or complaint exhibited against them.—*Cowel.*

SUMMONITORES SCACCARII, (*Summoners of the Exchequer*). Officers who assisted in collecting the king's revenues by citing the defaulters into the Exchequer.—*Cowel.*

SUMMONS, *Writ of.* The writ or process used for the commencement of all personal actions in the courts of law. It is a *judicial* writ (i. e. a writ issuing out of the court in which the defendant is to be sued and witnessed in the name of its chief judge), and is directed to the defendant, whom it commands to appear in court at the suit of the plaintiff. For full information on this subject the reader is referred to the outline of an action at law at the end of this Dictionary.

SUMMONS. The process used for bringing a party before a justice of the peace on summary convictions is termed a *summons.*—4 *Bl.* 281.

SUMMONS AD WARRANTIZANDUM (*summoneas ad warrantizandum*). The process by which the vouchee in a common recovery was called to warranty.—*Co. Litt.* 101; *Cowel.*

SUMMONS AND ORDER. In the progress of an action at law it frequently becomes necessary to obtain the order of the court upon some matter of minor importance; and as such matters are of very frequent occurrence, it would be inconvenient in many respects to permit the party seeking such an order to make an application for the same in open

court; in consequence of which, one of the judges usually sits at his own chambers for the purpose of hearing and disposing of such minor matters. The party who wishes to obtain a judge's order must usually *summon* the attorney or agent of the opposite party before the judge, which he does by obtaining a *judge's summons*, and and serving it on such opposite party, which summons requires him to attend before the judge at a specified time, to show cause why the party applying for the order should not have it granted him. The *order* of the judge, when granted, usually orders or grants liberty to the applicant to have what he seeks.—2 *Arch. Pract.* 1218.

SUMMONS AND SEVERANCE. See tit. *Severance.*

SUMPTUARY LAWS. Laws made for restraining excess of expenditure in clothes and apparel, &c.—*Cowel.*

SUPER-INSTITUTION (*super institutio*). One institution upon another; as in the case of A. being admitted and instituted to a benefice upon one title, and B. being admitted and instituted, &c. by the presentment of another.—*Cowel.*

SUPERIOR COURTS. The courts of the highest and most extensive jurisdiction; viz., the Court of Chancery and the three courts of common law; i. e., the Queen's Bench, the Common Pleas and the Exchequer, which sit in Westminster Hall, are commonly so termed. — 4 *Step. Pl.* 368, 369, *5th ed.* See also *Peacock* v. *Bell*, 1 *Saund.* 73; 12 *Ad. & El.* 256; 4 *Ad. & El.* 433, 446.

SUPERIOR. In the Scotch law is one who has made an original grant of heritable property, under condition that the grantee shall annually pay to him a certain sum of money, or perform certain services. The grantee is termed the vassal. The interest of the grantor (Sc. granter) is termed the *dominium directum*, and his condition, status, or inherent rights, such as his title to the feu duty and services specified in the grant, is termed his *superiority*. —See *Bell's Sc. Law Dict. tit. Superiority*; also *5 & 6 Vict. c. 35, s.* 12.

SUPERONERATIONE PASTURÆ. A judicial writ, which lay against him who was sued in the county court for the *overburdening of a common* with his cattle, in a case where he had been before sued for it in that court, and the cause had been removed into the king's court at Westminster.—*Cowel.*

SUPER PREROGATIVA REGIS. A writ that formerly lay against the widow of the king's tenant for marrying without his license.—*F. N. B.* 173.

SUPERSEDE. To stay, stop, interfere with, or annul. Thus, the proceedings of outlawry may be *superseded* at any time before the return of the exigent by the entry of the defendant's appearance with the clerk of the outlawries." So the Lord Chancellor or Court of Review will *supersede* or annul a fiat in bankruptcy, if it has been improperly issued, as where the bankrupt is discovered not to be a trader within the bankruptcy laws. — 10 *Bing.* 544; 1 *Arch. Pr. Att.* 122; 1 *Mont. & Ayr. Bankruptcy*, 514—557; *5 & 6 Vict. c.* 122, *s.* 4.

SUPERSEDEAS. A writ which lies in various cases to *supersede* or to stay the doing of that which ought not to be done (on account of the particular circumstances of the case), but which ordinarily may be done. Thus, for example, a man may commonly obtain surety of peace against another of whom he swears he is in bodily

fear, and the justice of whom the same is required cannot commonly deny the party such surety; but if the party has been before bound to the peace, then a writ of *supersedeas* lies to stay the justice from doing that which otherwise he ought not to deny.—*F. N. B.* 236. See also tit. *Supersede.*

SUPPLEMENTAL BILL. In a suit in chancery it frequently happens that new matter has arisen or is discovered since the filing of the original bill in the suit, or that some of the parties have acquired a new interest, or that fresh parties must be brought before the court, who have acquired an interest in the matter in question since its commencement. It occasionally happens that some of these objects may be accomplished by amending the bill; but after the parties are at issue, and witnesses have been examined in the suit, the bill cannot be amended, and therefore the defect is in such case supplied by means of what is termed a *supplemental bill.* — *Gray's Ch. Pr.* 86; 3 *Bl.* 448.

SUPPLETORY OATH. In the modern practice of the civil law they do not allow a less number than two witnesses to the *plena probatio* (full proof); they call the testimony of one *semi-plena probatio* only, on which no sentence can be founded. In order to *supply* the other half of proof, they admit the party himself (plaintiff or defendant) to be examined in his own behalf, and the oath which is administered to him for that purpose is called the *suppletory oath*, because it *supplies* the necessary quantum of proof on which to found the sentence. —3 *Bl.* 370; *Ayliffe's Parer.* 391.

SUPPLICAVIT. A mandatory writ issuing out of the Court of King's Bench or Chancery to compel a justice to give security of peace to a party who is in bodily danger.—4 *Bl.* 253.

SUPPLIES. The "supplies," in parliamentary proceedings, signify the sums of money which are annually voted by the House of Commons for the maintenance of the crown and the various public services. See tits. *Committee of Supply* and *Committee of Ways and Means.*

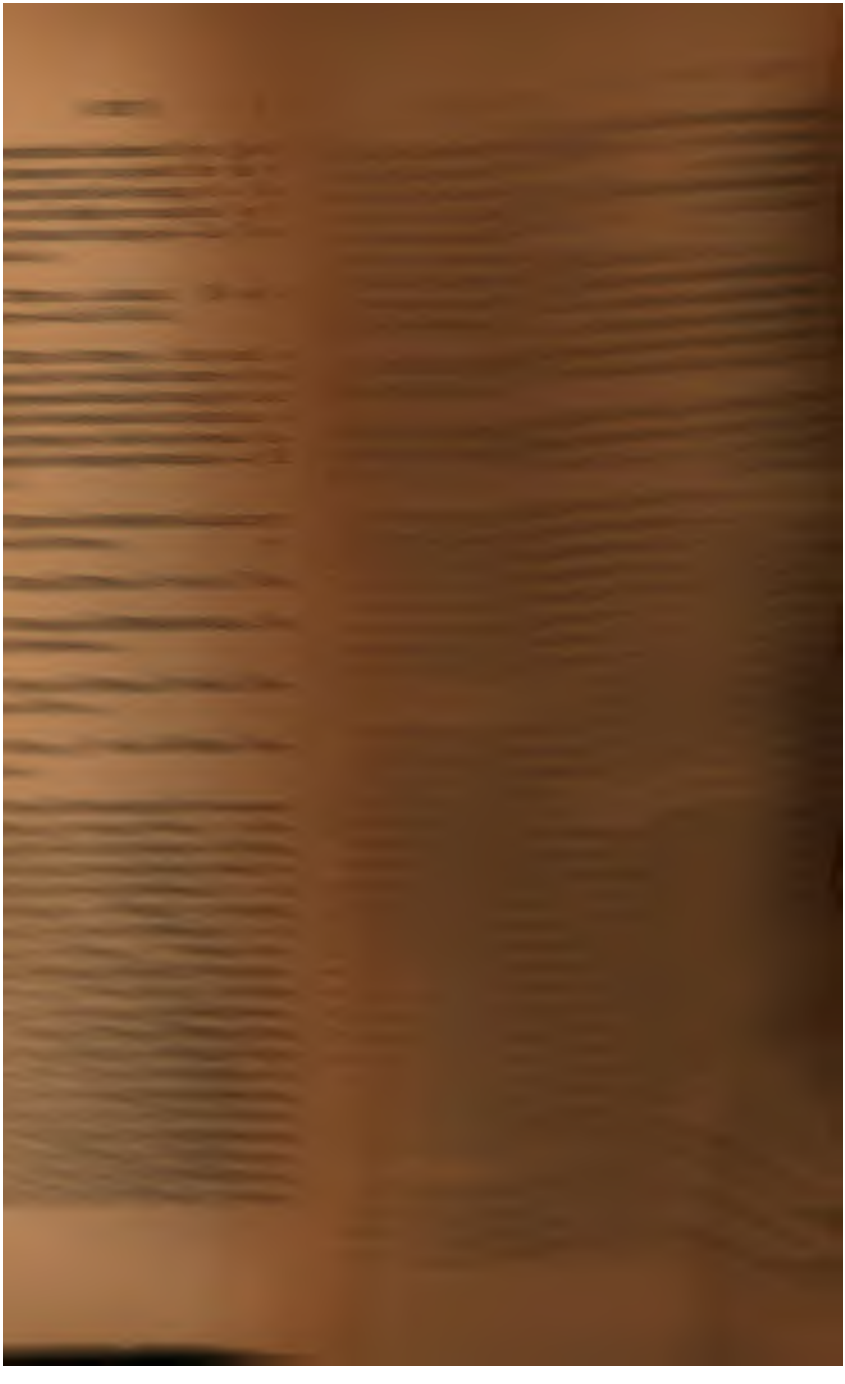
SUPPOSITITIOUS BIRTH. See tit. *De Ventre inspiciendo.*

SURCHARGE. This word signifies overcharge, or over and above the regular amount. Thus, surcharge of the forest or of common signifies the putting in the forest or on the common more beasts than one has a right to put; and if, after admeasurement of common, upon a writ of admeasurement of pasture, the same defendant *surcharges* the common again, the plaintiff may have a writ of *second surcharge* (de secunda superatione pasturæ), by which the sheriff is directed to inquire by a jury whether the defendant has in fact again *surcharged* the common contrary to the tenor of the last admeasurement, and if he has, he shall then forfeit to the king the supernumerary cattle put in, and shall also pay damages to the plaintiff. —3 *Bl.* 238.

SUR CUI IN VITA. A writ that lay for the heir of a woman whose husband had aliened her land in fee, and she omitted to bring the writ of *cui in vita* for the recovery thereof; in which case her heir might have this writ against the tenant after her decease.—*Cowel.*

SURETY OF GOOD BEHAVIOUR. See tit. *Surety of the Peace.*

SURETY OF THE PEACE (*securitas pacis*). Surety of the peace is a species of preventive justice, and consists in



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obliging those persons whom there is a probable ground to suspect of future misbehaviour, to stipulate with, and to give full assurance to the public that such offence as is apprehended shall not take place, by finding pledges or securities for keeping the peace, or for their good behaviour. This security consists in being bound with one or more securities in a recognizance or obligation to the king entered on record, and taken in some court, or by some judicial officer; whereby the parties acknowledge themselves to be indebted to the crown in the sum required (for instance 100*l.*) with condition to be void and of none effect if the party shall appear in court on such a day, and in the meantime shall keep the peace, either generally towards the king and all his liege people, or particularly also with regard to the person who seeks such security. Or if the security be for the good behaviour of the party, then on condition that he shall demean and behave himself well (or be of good behaviour), either generally or specially, for the time therein limited, or for one or more years, or for life.—4 *Bl.* 252.

SURMISE, *To.* To suggest. Thus, where a defendant in an action pleads a local custom—as, e. g., a custom of the city of London—it is necessary for him "to *surmise*" that such custom should be certified to the court by the mouth of the recorder; and without such a "*surmise*," it shall be tried by the country, as other issues in fact are.—1 *Bur.* 251; *Vin. Abr.* 246 (*P.*)

SURPLUSAGE (*surplusagium*). In its most comprehensive signification this word means unnecessary matter of whatever description; but in its more strict and confined meaning it imports matter wholly foreign and irrelevant.—*Step. on Plead.* 454.

SURREBUTTER. See tit. *Rebutter.*

SURREJOINDER. See tit. *Rebutter.*

SURRENDER (*sursum redditio*). A surrender is of a nature directly opposite to a release; for as the latter operates by the greater estate descending upon the less, so a surrender operates by the falling of a less estate into a greater. It is defined by Lord Coke to be the yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual agreement between them. The person who so surrenders is termed the *surrenderor*, and the person to whom he surrenders is termed the *surrenderee.* —4 *Cruise*, 92; 2 *Bl.* 326.

SURRENDER OF COPYHOLDS. The mode of conveying or transferring copyhold property from one person to another is by *surrender*; which consists in the yielding up of the estate by the tenant into the hands of the lord for such purposes as are expressed in the surrender. The process in most manors is for the tenant to come to the steward either in court (or, if the custom permits, out of court), or else to two customary tenants of the same manor, provided there be also a custom to warrant it, and there by delivering up a rod, a glove, or other symbol, as the custom directs, resigns into the hands of the lord, by the hands and acceptance of his steward, or of the said two tenants, all his interest and title to the estate; in trust, to be again granted out by the lord to such persons and for such uses as are named in the surrender and the custom of the manor will warrant.—2 *Bl.* 365.

SURROGATE (*surrogatus*). One who is appointed or substituted in

the place of another, most commonly of a bishop, or a bishop's chancellor. He it is who usually presides in the bishop's diocesan court, and by whom, as the representative of the ordinary, letters of administration are granted, where the spiritual court is not presided over by a judge. Upon the death of the judges of the ecclesiastical courts, in the sees of Canterbury and London, the surrogates of such courts are by act of parliament directed to perform their duties, until the appointment of their successors. —3 *Burn's Ecc. Law*, 667, 229; *stat.* 10 *Geo.* 4, *c.* 53, *s.* 13.

SURSISE (*supersisa*). A word of special use in the castle of Dover, signifying such penalties and forfeitures as are laid upon those who do not pay their duties or rent for *castle-ward* at their days.—*Fleta, lib.* 6, *c.* 3; *Cowel.*

SURVIVORSHIP. One of the incidents to joint estates is what is termed the doctrine of *survivorship*, by which when two or more persons are seised of a joint estate of inheritance for their own lives, or *pur auter vie*, or are jointly possessed of any chattel-interest, the entire tenancy upon the decease of any of them remains to the survivors, and at length to the last survivor; and he shall be entitled to the whole estate, whatever it be, whether an inheritance or a common freehold only, or even a less estate.—2 *Bl.* 183.

SUSPENSE, SUSPENSION (*suspensio*). A temporary stop or suspension of a man's right; as when a seignory rent, &c. on account of the unity of possession thereof, and of the land out of which they issue, are not *in esse* for a time, but may be *revived* at some future time; and thus differs from an *extinguishment*, which would extinguish or annihilate it for ever. The word *suspension* is also applied to the depriving of an ecclesiastic of the profits and privileges of his benefice. —*Co. Litt. lib.* 3, *cap.* 10, *sec.* 559; *Cowel.*

SUS. PER COLL. An abbreviation of the Latin words *suspendatur per collum*. The usage is on the trial of prisoners for the judge to sign the calendar or list of all the prisoners' names, with their separate judgment in the margin, which is left with the sheriff. Thus, for a capital felony it is written opposite to the prisoner's name, "let him be hanged by the neck," which, when the proceedings were in Latin, was abbreviated "*sus. per coll.*"—4 *Bl.* 403; *Staundf. P. C.* 182.

SWANIMOTE or SWAINMOTE. See tit. *Sweinmote, Court of.*

SWEINMOTE, *Court of*. One of the forest courts so called. Its principal jurisdiction was to inquire into the oppressions and grievances committed by the officers of the forest; and also to receive and try presentments certified from the court of attachment against offenders in vert and venison. It was holden before the verderers, as judges, by the steward of the sweinmote thrice in every year, the *sweins* or freeholders within the forest composing the jury. —3 *Bl.* 72.

SYLVA CÆDUA (*coppicewood*). In law includes every sort of wood, except gross wood of the age of twenty years, by which is meant the large wood used as timber; and such wood, if of the age of twenty years, is exempted from the payment of tithe. All other wood is liable to payment of tithes.—3 *Burn's Ecc. Law*, 452; *Cro. Eliz.* 478; 1 *Roll. Abr.* 640, *pl.* 3; 2 *Ch. Pl.* 320, *6th ed.*; *stat.* 2 & 3 *Edw.* 6, *c.* 13.

SYNGRAPH (*synographus*). See tit. *Chirograph.*

T.

TABLE RENTS (*redditus ad mensam*). Rents paid to bishops or religious prelates, reserved or appropriated to their table or housekeeping. Such rents paid in *specie* or provision of meat and drink were sometimes called *lordland* rents.—*Cowel.*

TABLING OF FINES. The making a table for every county where the king's writ runs, containing the contents of every *fine* passed in any one term; as the name of the county, town, and place wherein the lands or tenements lay; the name of the demandant and deforceant, and of every manor named in the *fine*, &c.—*Cowel.*

TACFREE. An exemption from payments.—*Cowel.*

TACKING MORTGAGES. The doctrine of what is termed *tacking* mortgages may be thus explained. Suppose A. to have a mortgage on an estate for 1000*l.*, B., another mortgage on the same estate for 1000*l.*, and C. another mortgage on the same estate for 500*l.*; suppose also that A. has the legal estate in the property, and that C. at the time of advancing the 500*l.* had no notice of the mortgage of B.: in this case if C. pay off A.'s mortgage and take an assignment or conveyance of it from him, C. having now the legal estate and first mortgage of A., may *tack* or annex his third mortgage to such first, to the postponement of B.'s second mortgage. This method, by which a third mortgagee may obtain priority over a second, is termed *tacking.* The result of C.'s *tacking* in the above instance would be this; that in paying the mortgages off, C.'s mortgage for 500*l.*, though a third mortgage, would take precedence of B.'s second; and supposing the estate so mortgaged to be worth no more than 1500*l.*, C. would consequently take the whole, and both his mortgages would be satisfied, while B., the second mortgagee, would get nothing. It must however be observed that if A. had not the legal estate, or if at the time of C.'s advancing the 500*l.* he had notice of B.'s second mortgage, then such second mortgage would then be preferred to C.'s mortgage for 500*l.*, which is the third; because in that case C.'s eyes were open, and he took the mortgage with the knowledge that another had a preference to him. The reason assigned for a third mortgagee being thus able to gain priority over a second is, that by his obtaining the legal estate, he has both law and equity on his side, which supersede the equity of the second.—2 *Chitty's Bl.* 160, *n.* 9; *Gray's Ch. Pr.* 67, 69; 2 *Cruise*, 200.

TAIL (from the French *tailler*, to cut or to carve). This word, used in conjunction with the word *estate*, or the word *fee*, signifies an estate of inheritance, descendible to some particular heirs only of the person to whom it is granted; in contradistinction to an estate in *fee simple*, which is an estate descendible to the heirs general (without distinction) of the person to whom it is granted. An estate tail is of two kinds, *general* and *special.* When lands are given to a man and the heirs of his body without any further restriction, this is called an estate tail general; because how often soever such donee in tail be married, his issue by every such marriage is capable of inheriting the estate tail. But if the gift is restrained or limited to certain heirs of the donee's body, exclusive of others, as in the case of lands being given to a man and the heirs of his body *on*

Mary his present wife to be begotten, this is an estate tail special, because the issue of the donee by any other wife is excluded.

Estates tail are also distinguished into *estates tail male*, and *estates tail female*. When lands are given to a person and the heirs *male* of his or her body, this is called an estate tail male, and to which the female heirs are not capable of inheriting. On the other hand, when lands are given to a person and the heirs *female* of his or her body, this is called an estate tail female, and to which the male heirs are not capable of inheriting. The person who holds an estate tail is termed a *tenant in tail*. And when a person grants lands to a man and his particular heirs in the manner above described (i. e. when he creates an estate tail), such person is said to *entail* his lands—1 *Cruise*, 78, 79; 2 *Bl.* 111; *Les Termes de la Ley*.

TAINT. See tit. *Attainder*.

TAKING, *Felonious*. See tit. *Larceny*.

TAKING AN INQUISITION. Holding an inquisition or inquiry.

TAKING THE ASSIZES. The judges in entering upon the duties entrusted to them under the commission of assize, and the other commissions under or by virtue of which they act at the assizes, are said to "take the assizes." See tits. *Nisi Prius*, *Assizes*.

TAKING THE BENEFIT OF THE ACT. Availing oneself of the benefit or advantage to be derived from the provisions of the 1 & 2 Vict. c. 110, commonly called the "Insolvent Act," which, amongst other things, entitled an imprisoned debtor to be discharged, on his compliance with the requirements of the statute, and upon consideration of his estate being transferred for the benefit of his creditors in general. The above act (though amended by 2 & 3 Vict. c. 39) is the last general act with regard to insolvency; but its provisions only perpetuate or correct a series of statutes, of which the first was 53 G. 3, c. 102.—*Cooke's Insolvent Law*, xxxviii; 2 *Stephen, Bl.* 215.

TAKING UP A LEASE. Is the act of taking, accepting, or adopting a lease. As where the terms of a lease have been agreed to, and the instrument itself has been prepared by the attorney of the lessor, the lessee in signing the counterpart, and receiving the lease from the lessor, is said to "*take it up*."

TALE or COUNT. The declaration in common law pleadings was anciently so called.—3 *Bl.* 293.

TALES. When by means of challenges, or any other cause, a sufficient number of unexceptionable jurors does not appear at the trial, either party may pray a *tales*, as it is termed; that is, a supply of *such* men as are summoned on the first panel, in order to make up the deficiency. For this purpose a writ of *decem tales*, *octo tales*, and the like, used to be issued to the sheriff at common law, and must be still so done at a trial at bar, if the jurors make default. But at the *assizes* or *nisi prius*, by virtue of the statute 35 Hen. 8, c. 6, and other subsequent statutes, the judge is empowered at the prayer of either party to award a *tales de circumstantibus* of persons present in the court, to be joined to the other jurors to try the cause, who however are liable to the same challenges as the principal jurors. This is usually done till the legal number of twelve is completed.—3 *Bl.* 364; 1 *Inst.* 155.

TALESMEN. Men who make up

the deficiency in the number of jurors when a *tales* is awarded.—*Boote's Suit at Law*, 211.

TALITER PROCESSUM EST. When pleading the judgment of an inferior court the proceedings preliminary to such judgment, and on which the same was founded, must, to some extent, appear in the pleading; but the rule is, that they may be alleged with a *taliter processum est*, i. e. with a general assertion that "*such proceedings were had*," instead of a detailed account of the proceedings themselves; thus, "that A. B. at a certain court, &c. held at, &c. levied his plaint against C. D. in a certain plea of, &c. for a cause of action arising within the jurisdiction, and *thereupon such proceedings were had* that afterwards, &c. it was considered by the said court that A. B. should recover against the said C. D." 1 *Wms. Saund.* 92, *n.* (2); 2 *Mod.* 102; *Cowp.* 18; *Willes*, 122, 528, 688; *Steph. Pl.* 369, *5th ed.*

TALLAGE (*tallagium*). This word is said to be used metaphorically for a share of a man's substance, paid by way of tribute, toll, or tax; being derived from the French *taille*, which signifies, says Cowel, a piece cut out of the whole.—*Cowel.*

TAM QUAM. See tit. *Qui Tam Actions.*

TATH. A liberty claimed by the lords of manors in the counties of Norfolk and Suffolk, of having their tenants' flocks of sheep brought at night upon their own demesne ground, there to be folded for the manuring of their land.—*Cowel.*

TAX, *To.* The act of taxing costs is so termed. See tit. *Taxing Costs.*

TAXATION OF COSTS. See tit. *Taxing Costs.*

TAXING COSTS. There are certain officers in the courts of common law who are appointed to examine the items in attorneys' bills, and to make such deductions as they think proper to be made; this process of examining the bills, and making the proper deductions, is technically called *taxing costs*. The officers who perform this duty are the masters of the respective courts, and when a master has so examined a bill (or *taxed the costs*, as it is termed), and has deducted the items which he has thought proper to disallow from the gross amount, he marks down the remaining sum which is to be allowed, and this remaining sum, so certified to by the master, is thence called the *master's allocatur.*

TEAM and THEAME (from the Sax. *tyman*, to teem or bring forth). A royalty granted by the king's charter to the lord of a manor, for the hearing, restraining, and judging bondmen, neifs, and villeins, with their children, goods, and chattels, in this court.—*Cowel.*

TEDING-PENNY, *Tething-Penny*, or *Tithing Penny.* A small tax, tribute, or allowance paid to the sheriff from each tithing, towards the charge of keeping courts.—*Cowel.*

TELIWORC (from the Saxon *tællan*, to number, and *worc*, work). Work which the tenant was bound to do for his lord, for a stipulated number of days.—*Cowel.*

TELLERS. Four officers in the Exchequer so called, whose duty it was to receive all monies due to the king, and to give the clerk of the pell a bill to charge him therewith. They also paid all persons any money payable by the king, by warrant from the auditor of the receipt, and made weekly and yearly books both of their receipts and payments, which

they delivered to the lord-treasurer. —*Cowel.* See also next title.

TELLERS *in Parliament.* In the language of parliament the "Tellers" are the members of the house selected to count the numbers when a division takes place. In the House of Lords a division is effected by the "non-contents" remaining within the bar, and the "contents" going below it; a teller being appointed for each party. In the Commons the "ayes" go into the lobby at one end of the house, and the "noes" into a lobby at the other end, the house itself being left perfectly empty. The Speaker then appoints two tellers for each party, and of each two there is one for the ayes and one for the noes put together, in order that they may act as a check upon each other. On the return of the members into the house their names are ascertained by the clerks, who having in their hands alphabetical lists printed on large pieces of card-board, put a mark against the name of each as he passes. In this manner a division of a full house will be effected in little more than a quarter of an hour.

TEMPORALITIES OF BISHOPS. See tit. *Spiritualities of a Bishop.*

TENANT (*tenens*, from *tenere*, to hold). This word conveys a much more comprehensive idea in the language of the law, than it does in its popular sense. In popular language it is used more particularly as opposed to the word *landlord;* and always seems to imply that the land or property is not the *tenant's* own, but belongs to some other person, of whom he immediately holds it. But in the language of the law every possessor of landed property is called a *tenant*, with reference to such property; and this, whether such landed property is absolutely his own, or whether he merely holds it under a lease for a certain number of years. The reason of it is, that almost all the real property of this kingdom is, by the policy of our laws, supposed to be granted by, dependent upon, and *holden* of some superior lord, in consideration of some service to be rendered to the lord by the tenant or possessor of this property. Tenants are distinguished, according to the nature of the estate which they hold, by appropriate and corresponding terms. Thus, a person who holds an estate in fee-simple is called, with reference to such estate, a *tenant in fee-simple;* if the estate which a person holds is an estate tail, he is then called, with reference to such estate, a *tenant in tail;* if it is an estate for years, he is then called *tenant for years*, and so on. The word *tenant*, therefore, when applied to a person, always presupposes such person to be the holder or possessor of an estate of some kind or other, but what kind of estate it is cannot be determined without some additional adjuncts being associated with the word tenant; as the words "*in fee simple*," "*in tail*," "*for life*," "*for years*," &c. which at once define the extent of interest which the tenant has in the lands or tenements. For further information on this subject the reader is referred to title *Estate.*

TENANTS IN COMMON. They are generally defined to be such as hold by several and distinct titles, but by unity of possession, because none knows his own severalty, and therefore they all occupy promiscuously. —2 *Bl.* 180; see also tit. *Estate.*

TENANTS BY THE CURTESY. See tit. *Curtesy of England;* also tit. *Estate.*

TENANT AT SUFFERANCE. See tit. *Sufferance.*

TENANT AT WILL. See tit. *Will Estate at.*

TENANT IN TAIL. See tit. *Tail.*

TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT. The meaning of this title may be thus explained. Supposing lands to be given to a man and the heirs of his body on Mary his present wife to be begotten; such a man, with reference to the lands which he holds in such a restricted form, is called a *tenant in tail.* Now, if his wife Mary should happen to die without leaving issue, or having left issue, such issue should die also, he would then be called a *tenant in tail after possibility of issue extinct;* that is, the possibility of his having issue which could inherit the lands, would, on account of the death of his wife, be *extinct*, or extinguished; or, in other words, such a possibility could no longer exist, because Mary his wife, who was the only source from which he could derive issue capable of inheriting according to the terms of the gift, was dead, and therefore he would now be a tenant in tail after the possibility of his having issue (that is, by his wife Mary) had become extinct.

TENANT TO THE PRÆCIPE. See tit. *Recovery.*

TEND or TENDE. Seems to bear nearly the same meaning as the word *tender;* and signifies to offer, show forth, or to endeavour; as to tend the estate of the party of the demandant; to *tend* an averment, a traverse, &c.—*Cowel.*

TENDER ISSUE. See tit. *Tendering Issue.*

TENDER, *Plea of.* Signifies a plea by which the defendant alleges that he has been always ready to pay the debt demanded, and before the commencement of the action *tendered* it to the plaintiff, and now brings it into court ready to be paid to him, &c.—*Stephen on Pleading*, 247.

TENDERING ISSUE. If in the pleadings in an action the defendant *traverses* or denies some allegation of fact put forward by the plaintiff in his declaration or other pleading, it is evident that a question is at once raised between the parties as to the existence or non-existence, truth or falseness, of the fact to which the traverse or denial was addressed. A question being thus raised, or in other words the parties having arrived at a specific point, or matter affirmed on one side and denied on the other, the defendant (as the party traversing) is obliged to offer to refer this question to the proper mode of trial, which he does by annexing to the traverse an appropriate formula indicative of such offer, and in so doing he is said to "*tender issue.*" Where the question for trial is one of fact, the formula is simply as follows: "and of this the defendant puts himself upon the country," &c. meaning that, with regard to the question in issue, he throws himself upon a jury of his country. It must be observed, however, that other issues besides those of fact are frequently tendered.—*Steph. Pl. 59, 60, 5th ed.* See also tit. *Issue.*

TENEMENT (*tenementum*). This word has a very comprehensive signification in law, including within its compass every species of real property which may be *held*, or in respect of which a person may be a *tenant.* The word is used in the following manner by Blackstone. Almost all the real property of this kingdom is by the policy of our laws supposed to be granted by, dependent upon, and *holden* of some superior lord, by and in consideration of

certain services to be rendered to the lord by the tenant or possessor of his property. The thing holden is, therefore, styled a *tenement*, the possessors thereof *tenants*, and the manner of their possession a *tenure*.—2 *Bl.* 59.

TENEMENTARY LAND. The tenementary or tenemental lands were those lands which the Saxons distributed among their tenants, as distinguished from those lands which the lords retained in their own hands for the necessary use of their families, and which were called *demesne lands*. —2 *Bl.* 90; *Cowel.*

TENEMENTIS LEGATIS. A writ that lay in the City of London and other corporations (where there was a custom that men might devise tenements as well as goods and chattels by their last will) for hearing and determining any controversy respecting the same.—*Cowel; Reg. Orig.* 244.

TENENDUM. That formal part of a deed which is characterised by the words "*to hold.*" It was formerly used to express the tenure by which the estate granted was to be held; but since all freehold tenures have been converted into socage, the *tenendum* is of no further use, and is therefore joined to the *habendum*.—4 *Cruise*, 26.

TENENTIBUS IN ASSISA NON ONERANDIS. A writ that lay for him to whom a disseisor had aliened the land of which he had disseised another, that he might not be molested for the damages, if the disseisor had wherewith to satisfy them himself.—*Reg. of Writs*, 214; *Cowel.*

TENORE INDICTAMENTI MITTENDO. A writ by which the record of an *indictment*, and the process thereupon, was called out of another court into the Chancery.—*Reg. of Writs*, 69; *Cowel.*

TENSARY. A rate for the repair of a prison, taken by the corporation of *Oswestry* of all the inhabitants of the town who are not burgesses.—*Griffith* v. *Williams*, 1 *Wils.* 338.

TENTERDEN'S ACT, *Lord.* The 9th Geo. 4, c. 14, is so called, which is declared to be "An Act for rendering a written Memorandum necessary to the Validity of certain Promises and Engagements." As to the construction and effect of this statute, see 2 *Wms. Saund.* 64 *g*, *n.* (*c*).

TENTHS (*decimæ*). Tenths and fifteenths were temporary aids issuing out of personal property, and granted to the king by parliament. They were formerly the real tenth or fifteenth part of all the moveables belonging to the subject; when such moveable or personal estates were a very different, and much less considerable thing than they usually are at this day. Ecclesiastical *tenths* were the tenth part of the annual profit of each living which, with the first fruits (or the first year's profit of the living), was claimed by the Holy See from the clergy of the English Church, under the supposed authority of that precept of the Levitical law which directs that the Levites should offer the tenth part of their tithes as a heave-offering to the Lord, and give it to Aaron the *high* priest." At the time of the Reformation the clergy continued to pay the same tax, but then paid it to the king, who had become head of the church, but in the time of Queen Anne that monarch abandoned this source of revenue and allotted it to trustees for the purpose of augmenting poor livings.—1 *Bl.* 284, 6. See tit. *First Fruits.*

TENURE (*tenura*, from *tenere*, to hold). Tenure signifies the system of holding lands or tenements in subordination to some superior, and which in the feudal ages was the leading characteristic of real property. The king, who was at once the source of property and the fountain of justice and honour, had bestowed large territories on the great barons who immediately surrounded the throne, and these again had distributed his bounty through the channels of their numerous dependants. In legal contemplation at least, all the landowners of the kingdom had thus derived their estates. On this hypothesis, so consonant to the genius and history of feuds, the system of tenures was built; a system which linked every feudatory, by a chain more or less extended, to the crown, and rendered his fief eventually liable to resumption by the sovereign power, from which it had, or was assumed to have, originally emanated. The *nature* of the tenure, or in other words the *manner* in which lands were held, was characterized by appropriate terms; thus, lands held by the honourable tenure of military service, that is, in consideration of attending or assisting the lord in the wars, &c. was distinguished by the corresponding term of *tenure by knight service*, &c. Out of this system arose the relation of lord and vassal, corresponding to a certain extent with the landlord and tenant of the present age. To this system we may also refer the origin of the present legal assumption, that every possessor of real property is a *tenant* in respect of that property; that is, he is still considered as *holding* it of some superior lord, and therefore is a tenant in reference to such lord. To this system may also be referred the origin of the present *freehold* and *copyhold* tenures; into the one or the other of which nearly all the various tenures which existed during the period of feudal rigour have merged. This outline may, perhaps, suffice to convey to the mind of the reader a general idea of the nature of tenure. The nature of the *different kinds* of tenure will be found under their respective titles.—*Hayes, Convey.* 5; 1 *Cruise*, 1 to 52; 2 *Bl.* 59.

TERM (*terminus*). The word *term* is commonly used in two senses; 1st, as signifying those four periods of the year during which the courts at Westminster sit to hear and determine points of law, and transact other legal business of importance, and called respectively Hilary, Easter, Trinity, and Michaelmas Terms; and 2nd, as signifying the bounds, limitation, or extent of time for which an estate is granted. Thus when a man holds an estate for any limited or specific number of years, he is said to hold it for a *term* of years, and he himself is called, with reference to the term he so holds, the *termor* of the term. A term of years, considered as an estate or interest in lands, is but a *particle* or portion of some larger or greater estate or interest in the same lands, and hence is, with reference to such larger estate, termed a *particular* estate. The largest estate or interest which a person can have is obviously the entire ownership or inheritance, which may be termed the root or stock from which all particular estates or limited interests in the same lands are derived. A term of years is said to be either *outstanding* or *in gross*, or *attendant upon the inheritance*. It is outstanding or in gross, when it is unattached or disconnected with the estate or inheritance, as where it is in the hands of some third party having no interest in the inheritance; it is attendant, when vested in some trustee in trust for the owner of the inheritance. Thus, supposing A. to be the owner of the inheritance, and to have occasion for a loan of £1000,

which B. is willing to advance: A. leases the land to B. for a term of 1000 years, not reserving any rent, or reserving only a nominal rent, the lease containing a clause that if A. repays the £1000, with interest to B. on a given day, the term shall cease;—the payment is not in fact made on the day, so that the clause becomes wholly nugatory; but on a subsequent day, A. pays B. the principal and interest. What is now to become with the term? The purpose for which it was granted has been satisfied, but still the term continues to exist, and resides in B., who by virtue thereof is entitled in a court of law to recover the possession of the land for the remaining portion of the term. In point of conscience, it is true that B. ought to restore, and in a court of equity he would be compelled to restore, the land to A. The only mode therefore of withdrawing from B. the legal ownership in the land, which he has now in an equitable point of view no longer any right to enjoy, is either to induce B. to surrender the term to A., by which, by the operation of a legal doctrine termed "merger," the term would be absorbed in the inheritance, and cease to have any continued existence; or to procure him to make a transfer or assignment of his interest in the term to some third party as a trustee for A., to the intent that such third party shall hold the term solely for the benefit of A.'s inheritance. This latter course is that which for many reasons is frequently had recourse to in preference to the former, and when a term has been thus transferred or assigned, it is technically said to "attend upon the inheritance," because whosoever becomes entitled to the inheritance would be equitably entitled to such term as belonging to it, and the term itself is thence called an "attendant term." See the subject clearly and ably treated in *Hayes' Pop. View of the Law of Real Property, p. 56.*

TERM FEE or TERMAGE FEE. A small fee or allowance which an attorney in a cause is entitled to for every *term* in which any step is taken in the cause, from the time of the delivery of the declaration until final judgment. The term for this purpose is considered as including the following vacation, so that if any step in the cause be taken between one term and another, as for instance between Michaelmas and Hilary Terms, i. e. in Michaelmas Vacation, he will be entitled to his fee for Michaelmas Term the same as if the step had been actually taken in the term itself. The amount of the fee varies from 13*s.* to 1*l.*—*Bag. Pr.* 203; *Arch. Pr.*; *Lush's Pr.*

TERM IN GROSS. See tit. *Term.*

TERM PROBATORY. Is the time given to a party propounding a libel or allegation in a suit in the ecclesiastical courts, to examine his witnesses and *prove* the facts he has set forth in his pleading. This period for examining witnesses is limited, by the orders of court *Easter Term*, 1837, from the bye-day of one term to the 1st session of the following term, but the court is frequently requested to allot further time, or, in the language of these courts, "*to extend the term probatory.*"—*Rogers' Ecc. Law*, 381; 1 *Hagg. App. No.* 1; 4 *Hagg.* 95.

TERMINUM QUI PRETERIIT, *Writ of Entry ad.* A writ which lies for the reversioner, when the possession is withheld by the lessee or a stranger, after the determination of a lease for years.—3 *Chitty's Bl.* 183.

TERMOR. See tit. *Term.*

TERRA EXTENDENDA. A writ

directed to the escheator, &c. commanding him to inquire and find out the true yearly value of any land, &c. by the oath of twelve men, and to certify the *extent* into the chancery.—*Cowel.*

TERRE-TENANT, TERTENANT (*terræ tenens*). He who is literally in the occupation or possession of the land, as distinguished from the mere owner of the same.—2 *Bl.* 91, 328.

TERRIS, BONIS ET CATALLIS REHABENDIS POST PURGATIONEM. A writ that lay for a clerk to recover his lands, goods, or chattels, formerly seized, after he had cleared himself of that felony or suspicion of which he had been convicted, and delivered to his ordinary to be purged.—*Reg. Orig.* 68; *Cowel.*

TERRIS ET CATALLIS TENTIS ULTRA DEBITUM LEVATUM. A judicial writ for the restoring of lands or goods to a debtor who is distrained beyond the amount of his debt.—*Cowel.*

TERRIS LIBERANDIS. A writ that lay for a man convicted by attaint, to bring the record and process before the king, and to take a fine for his imprisonment, to deliver him his lands and tenements again, and to release him of the strip and waste. It also lay to deliver lands to the heir after homage and relief performed.—*Reg. Orig.* 232, 313; *Cowel.*

TEST AND CORPORATION ACTS. Were acts passed for the better securing the established church against perils from nonconformists of all denominations, infidels, Turks, Jews, heretics, papists and sectaries; by the latter of which no person could be legally elected to any office relating to the government of any city or corporation, unless within a twelvemonth before he had received the sacrament of the Lord's Supper according to the rites of the Church of England; and he was also enjoined to take the oaths of allegiance and supremacy at the same time that he took the oath of office. The *test* act directed all officers civil and military to take the oaths and make the declaration against transubstantiation in any of the king's courts at Westminster, or at the quarter sessions, within six calendar months after their admission, and also within the same time to receive the sacrament of the Lord's Supper, according to the usage of the Church of England, in some public church immediately after divine service and sermon, and to deliver into court a certificate thereof, signed by the minister and churchwarden, and also to prove the same by two credible witnesses, upon forfeiture of 500*l.* and disability to hold the office.—4 *Ch. Bl.* 58, 59.

TESTA DE NEVIL. An ancient and authentic record in the custody of the king's remembrancer in the exchequer, said to be compiled by *Jollan de Nevil*, a justice itinerant in the 18 and 24 of H. 3, containing an account of all lands held in grand or petty serjeanty, with fees and escheats to the king.—*Cowel.*

TESTAMENT. See tit. *Will.*

TESTAMENTARY CAUSES. Are causes that are cognizable in the ecclesiastical courts concerning last wills and testaments.—3 *Bl.* 95.

TESTAMENTARY GUARDIAN. A person appointed by a father in his last will and *testament* to be the guardian of his child until it should attain the age of twenty-one years.—2 *Bl.* 88.

TESTATOR. The person who

makes a will or *testament* is so called. See also tit. *Intestate*.

TESTATUM. When a writ of execution has been directed to a sheriff of a county, and that sheriff returns that there are no goods of the defendant in his bailiwick, then a second writ, reciting this former writ and the sheriff's return to the same, may be directed to the sheriff of some other county wherein the defendant is supposed to have goods, commanding him to make execution of the same; and this second writ is called a *testatum* writ, from the words in which the writ is concluded, viz. "Whereupon, on behalf of the said plaintiff, *it is testified* in our said court that the said defendant has goods, &c. within your bailiwick."—1 *Arch. Pract.* 576.

TESTE. The *teste* of a writ is that clause at the bottom of a writ beginning with the word "*witness*." When, therefore, a writ is said to be *tested* in the name of such or such a a judge, it means that it is *witnessed* in his name.

TESTES, *Proof of Will per*. When the validity of a will is contested, the executor, instead of proving it in the common form, i. e. upon his own oath simply, before the ordinary or surrogate, proves it *per testes* (by witnesses). When a will is so proved, two witnesses are indispensable; although it does not appear to be necessary that they should have read the will, or even heard it read, provided they can depose on oath that the testator declared that the writing produced was his last will and testament, or that he duly executed the same in their presence.—4 *Burn's Eccl. Law*, 205; *Godol.* 66; *Toll. Ex.* 57; 2 *Bl.* 508.

TESTES, *Trial per*. Is a trial had before a judge without the intervention of a jury; in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but this mode of trial, although common to the civil law, is seldom resorted to in the practice of the common law.—3 *Ch. Bl.* 336, *and n.* (4).

TESTIMONIAL. A certificate under the hands of a justice of the peace testifying the place and time, when and where a soldier or mariner landed, and the place of his dwelling and birth, whither he is to pass.—*Cowel; 3 Inst.* 85.

THANAGE. See tit. *Thane*.

THANE (from the Sax. *thenian*, to minister). Thanes were those important personages who attended the English Saxon kings in their courts, and who held their lands immediately of those kings. That portion of the king's land of which a *thane* was the ruler or governor, was termed "*thanage of the king*;" and such lands as the Saxon kings granted by charter to their thanes were denominated "*thane lands*."—*Cowel*.

THEFT (*furtum*). See tit. *Larceny*.

THEFT-BOTE. The offence of *theft-bote* arises by a party who has been robbed and knows the felon, taking his goods again, or receiving other amends upon agreement not to prosecute.—4 *Bl.* 133.

THELONIO RATIONABILI HABENDO PRO DOMINIS HABENTIBUS DOMINICA REGIS AD FIRMAM. A writ that lay for him who had any portion of the king's demesne in fee-farm, to recover reasonable *toll* of the king's tenants there, if his demesne had been accustomed to be tolled.—*Reg. Orig.* 87; *Cowel*.

THELONIUM or BREVE ESSENDI QUIETI DE THELONIO. A writ which lay for the citizens of any city, or the burgesses of any town, that have a charter or prescription to free them from *toll*, against the officers of any town or market, who would constrain them to pay *toll* on their merchandize contrary to such grant or prescription.—*F. N. B.* 226.

THEMMAGIUM. A duty or acknowledgment paid by inferior tenants in respect of theme or *team*.—*Cowel.*

THETHINGA. A tithing; and *thething-mannus* a tithing-man.—*Cowel.*

THIRDBOROW. An officer in former times, corresponding with the constable of the present day.—*Cowel.*

THIRDINGS. The third part of the corn or grain growing on the ground at the tenant's death, which is due to the lord as a heriot within a certain manor in the county of Hereford.—*Cowel.*

THRITHING (*thrithingum*). In the Statute of Merton signifies a court which consists of three or four hundreds.—2 *Inst.* 99.

TIDING-PENNY or TITHING-PENNY. A tribute or small payment to the sheriff from each tithing towards defraying the expenses of keeping courts.—*Cowel.*

TIMBER TREES. In a legal sense, *timber trees* include oak, ash, and elm. In some places, however, by local custom, where other trees are commonly used for building, they are on that account considered as timber.—2 *Bl.* 281.

TIMBERLODE. A service which some tenants were bound to perform to their lords of carrying felled timber from the woods to the lord's house.—*Cowel.*

TIME OUT OF MIND. Any period anterior to the reign of Richard I.—*Bract. l.* 2, *c.* 22; 3 *Lev.* 160. See also tit. *Legal Memory.*

TINEWALD. The ancient parliament or annual convention of the Isle of Man.—*Cowel.*

TINPENNY. A customary tribute paid to the *tithing-man* to support the trouble and expenses of his office.—*Cowel.*

TIPSTAFF. Tipstaves are officers appointed by the marshal of the King's Bench prison, and in the Common Pleas and Exchequer by the warden of the Fleet, who attend the king's courts with a staff or rod tipt with silver, and take into their charge all prisoners committed by the court.—1 *Arch. Prac.* 27; *Cowel.*

TITHES (*decimæ*, from the Saxon *teotha*, i. e. tenth). A species of incorporeal hereditaments, defined to be the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants; the first species being usually called *predial*, and consisting of corn, grass, hops, wood and the like: the second *mixed*, as of wool, milk, pigs, &c., consisting, it will be observed, of natural products, but nurtured and preserved in part by the care of man: the third *personal*, as of manual occupations, trades, fisheries and the like. The distinction between *predial* and *mixed* tithes is, that predial tithes (so called from *prædium*, a farm) are those which arise immediately from the soil, either with or without the intervention of human industry; and *mixed* are those which arise immediately through the

increase or other produce of animals which receive their nutriment from the earth, and its fruits. *Personal* tithes are so called because they arise entirely from the *personal* industry of man. In addition to this distinction, tithes have been divided into two classes, viz. *great* and *small;* the former comprehending in general the tithes of corn, peas, beans, hay and wood; the latter all other predial, together with all personal and mixed tithes. Tithes are great or small according to the nature of the things which yield the tithe, without reference to the quantity. Thus clover grass made into hay is of the nature of all other grass made into hay, and consequently is a great tithe; but if left for seed, its nature becomes altered, and, like other seed, it becomes a small tithe.—2 *Chit. Bl.* 24, *and n.* 6; *Cowel.*

TITHING (*tithingum*, from the Sax. *teothunge*, which signifies a set of ten men appointed to any office). One of the civil divisions of the territory of this country, being a portion of that greater division called a *hundred;* it was so called because *ten* freeholders with their families composed one. It is said that they were all knit together in one society, and bound to the king for the peaceable behaviour of each other. In each of these societies there was one chief or principal person, who from his office was called *teothing-man*, now *tithing man.*—*Mirr. c* 1, *sec.* 3; 1 *Bl.* 114; *Cowel.*

TITHING-MAN. During the Saxon times the officer who was appointed to preside over tithings and to examine and determine all causes of small importance between the inhabitants of adjacent tithings was so called. In the present day, however, *tithing-men* are a kind of constables elected by parishes, and sworn in their offices in the court leet, and sometimes by justices of the peace, &c.—1 *Bl.* 114, *n.* 31, 32; *Cowel.*

TITLE (*titulus*). This word may be defined generally to be the evidence of the right which a person has to the possession of property. The word *title* certainly does not *merely* signify the right which a person has to the possession of property, because there are many instances in which a person may have the right to the possession of property, and at the same time have no title to the same. In its ordinary legal acceptation, however, it *generally* seems to imply a right of possession also. It therefore appears on the whole to signify the outward evidence of the right, rather than the mere right itself. Thus, when it is said that the "most imperfect degree of *title* consists in the mere naked possession or actual occupation of an estate," it means that the mere circumstance of occupying the estate is not evidence of the occupier's right to such possession. The word is defined by Sir Edward Coke thus: "*Titulus est justa causa possidendi id quod nostrum est.*"—1 *Inst.* 345.

TITLE DEEDS. See *Abstract of Title.*

TITLE OF A SOUGH. See tit. *Sough.*

TITLES OF CLERGYMEN. Before a candidate for holy orders can be ordained, he must obtain what is termed a title; which is either an appointment to a benefice actually vacant, or to a curacy, and also a letter from the clergyman who gives the title, signifying the reason which obliges him to appoint a curate.—*Eccl. Leg. Guide*, 4.

TITLE OF ENTRY. The right or title to enter upon lands. Thus, when one seised of land in fee makes

a feoffment of the same on condition, and that condition is afterwards broken, then the feoffor has *title to enter* into the land.—*Cowel.*

TOFT (*toftum*). A messuage, or the site or piece of ground on which a messuage has stood: and the owner of a toft is termed a *toftman.*—*West. Symb.; Cowel.*

TOFTMAN. See tit. *Toft.*

TOLERATION ACT. The stat. 1 Will. & M. st. 1, c. 18, for exempting the protestant dissenters from the penalties of certain laws is so called. —4 *Bl.* 52, 53.

TOLL. This word has various significations. When used as a verb it signifies to bar, to defeat, or to take away; thus, to *toll the entry* signifies to deny or take away the right of entry. When used as a noun it signifies either a liberty to buy or sell within the precinct of a manor, or a tribute or custom paid for passage.—*Cowel; Les Termes de la Ley;* 1 *Mee. & W.* 19.

TOLL THOROUGH. Is a toll or payment claimed for passing over the public highway.—*Willes,* 115; 10 *B. & C.* 508; 1 *M. & W.* 19; 3 *Burr.* 1402.

TOLL-TIN. Is a toll payable by the adventurers in the tin mines to the owner of the freehold, or to the lord of the manor wherein the mines, whence the tin is gotten, lies. In the parish of St. Agnes, near Bodmin, the toll-tin amounted to one fifteenth part of all the tin obtained.—*Rex* v. *The Inhabitants of St. Agnes,* 3 *T. R.* 480.

TOLL TRAVERSE. Is a sum demanded for passing over the private soil of another (*Com. Dig. tit. Toll A.*); or a duty which a man pays for passing over the soil of another in a way not a highway (*Vin. Abr. tit. Toll (A.)*); or for the passage over the private ferry, bridge, &c. of another.—*Sid.* 454; 1 *M. & W.* 19; 8 *Ad. & El.* 716; 3 *Nev. & P.* 476.

TOLLAGE. See tit. *Tallage.*

TOLT (*tolta*). A writ by which a cause depending in a court baron is removed to the county court. It also sometimes signifies a tribute or exaction.—*Old. Nat. Brev. fol.* 2; *Cowel.*

TONNAGE (*tonnagium*). A duty imposed by parliament upon merchandise exported and imported, according to a certain rate upon every tun.—1 *Bl.* 315; *Cowel.*

TORT (*tortus*). A wrong or injury. Personal actions are founded either on *contracts* or *on torts.* The latter signify such wrongs as are in their nature distinguishable from mere breaches of contract, and are often mentioned as of three kinds, viz. *nonfeasance,* or the omission to do some act which a man is bound to do; *misfeasance,* or the improper performance of some act which he may lawfully do; or, *malfeasance,* being the commission of some act which is positively unlawful. Actions founded upon *tort* are sometimes described as actions *ex delicto,* in distinction to actions *ex contractu,* which are founded upon contract. The forms of action generally founded upon tort are *trover, detinue, trespass, trespass on the case,* and *replevin;* whilst *debt, assumpsit* and *covenant,* being founded on contract, belong to the class of actions termed *ex contractu.*—1 *Ch. Pl.* 3; *Step. Bl.* 460.

TORTFEASOR (Fr. *tortfaiseur*). A wrong-doer, or a trespasser.—*Co.* 2, *par. p.* 383.

TORTURE. See tit. *Pain forte et dure.*

TOTIES QUOTIES. As often as. 19 *Car.* 2, *c.* 4.

TOTTED. A debt to the king was said to be *totted* when the foreign apposer or other officer in the exchequer noted it to be good, by writing the word *tot* to it, viz. *tot pecuniæ regi debitur.*—*Cowel.*

TOURN. See tit. *Sheriff's Tourn.*

TOUT TEMPS PRIST (*at all times ready*). Words used by the defendant in a plea of tender (to an action brought against him for a debt) to the effect that he has always been ready and still is ready to discharge it, "*tout temps prist et uncore prist.*" —3 *Bl.* 303. See tit. *Tender.*

TOWN CAUSE. Is a cause in which the venue is laid and the trial takes place at the nisi prius sittings in London or Middlesex. See tit. *Country Cause.*

TRANSCRIPTO PEDES FINIS LEVATI MITTENDO IN CANCELLARIUM. A writ for the certifying the foot of a fine levied before *justices in eyre*, &c. into the chancery.—*Reg. Orig.* 669; *Cowel.*

TRANSCRIPTO RECOGNITIONIS FACTÆ CORAM JUSTICIARIIS ITINERANTIBUS. A writ for certifying a recognizance taken before *justices in eyre* into the chancery.—*Reg. Orig.* 152; *Cowel.*

TRANSFERRING USES INTO POSSESSION. See tit. *Use.*

TRANSGRESSIONE. A writ commonly called a writ or action of trespass.—*Cowel; F. N. B.* 84.

TRANSITORY ACTIONS. Actions are said to be either *local* or *transitory*; an action is local when all the principal facts on which it is founded are of a local character and carry with them the idea of some certain place; these are generally such as relate to *realty.* An action is termed *transitory*, when the principal fact on which it is founded is of a transitory kind, and might be supposed to have happened anywhere; and therefore all actions founded on debts, contracts, and such other matters relating to the person or personal property, come under this denomination.—*Step. on Plead.* 316, 317.

TRANSLATION (*translatio*). This word as applied to a bishop signifies removing him from one diocese to another.—*Cunningham.*

TRAVERSE (from the Fr. *traverser*, to cross, or oppose). In the language of pleading signifies a denial. Thus, when a defendant denies any material allegation of fact in the plaintiff's declaration, he is said to *traverse* it, and the plea itself is thence frequently termed a *traverse.* Besides the common traverse, as explained above, there is one of occasional occurrence termed a *special* traverse, or traverse with an *absque hoc.* This, instead of being framed in the shape of a simple denial, consists ordinarily of two branches, one involving the introduction of new affirmative matter, which inferentially or argumentatively denies the disputed allegation of fact upon which the defendant purposes raising an issue; the other, consisting of a direct denial of such allegation of fact.—See tit. *Special Traverse;* also tit. *Absque Hoc.*

TRAVERSE OF AN INDICTMENT. The word *traverse*, as applied to an indictment, has the same import as when applied to a declaration; signifying to contradict or deny some principal matter of fact therein: as,

in a presentment against a person for a highway overflowed with water, for default of scouring a ditch, &c., he may allege that there is no highway, or that the ditch was sufficiently scoured.—4 *Bl.* 351; *Cowel.* See tit. *Traverse.*

TRAVERSE OF AN OFFICE. The proving that an inquisition made of lands or goods by the escheator is defective and untruly made.—*Kitchin*, 227.

TRAYLBASTON. A writ of inquisition so called, which was issued by Edward the First against intruders on other men's lands, and against various other offenders.—*Cowel.*

TREASON (from the Fr. *trahir*, to betray). In its general signification signifies a breach of faith, and is distinguished into *petit* and *high* treason. The crime of petit treason arises whenever a superior reposes confidence in a subject or inferior, between whom and himself there subsists a natural, a civil, or even a spiritual relation, and the inferior so abuses that confidence, and forgets the obligations of duty, subjection, and allegiance, as to destroy the life of any such superior or lord. Such are the crimes of a wife killing her lord or husband, a servant his lord or master, and an ecclesiastic his lord or ordinary. But when disloyalty attacks even majesty itself, it is then called by way of eminent distinction *high treason.* This crime arises whenever a man doth compass or imagine the death of our lord the king, or of our lady the queen, or of their eldest son and heir; or if a man do violate the king's companion, or the eldest daughter unmarried, or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and such like. — 4 *Bl.* 75; *Matt. Crim. Law*, 397.

TREASURER'S REMEMBRANCER. See tit. *Remembrancers.*

TREASURE-TROVE (*thesaurus inventus*). — Any money, coin, gold, silver, plate, or bullion *found* hidden in the earth, the owner thereof being unknown. Such kind of treasure in general belongs to the king and forms one of the sources of his revenue. When however it is found in the sea, or *upon* the earth, it does not belong to the king, but to the finder in case no owner appears. In many cases *treasure-trove* belongs to the lord of the manor, within whose limits it was found, by special grant or prescription.—1 *Bl.* 295; *Cowel.*

TREASURY BENCH. In the House of Commons the first row of seats on the right hand of the speaker is so called, because occupied by the first lord of the Treasury or principal ministers of the crown.

TREBLE COSTS. Are three times the amount of the costs incurred by a party in an action, and the payment of such costs is by various statutes imposed as a punishment upon persons violating the provisions of those statutes. Thus by 29 Eliz. c. 4, the sheriff for extortion on final process is liable not only to pay treble damages (or three times the amount of the sum which he has extorted), but also *treble costs*, which is the amount of the plaintiff's costs reckoned three times over.—2 *B. & Ald.* 393; 1 *Ch. Rep.* 137; 2 *Ch. Pl.* 326, *n.* (*h*), *6th ed.*

TREBUCKET. A certain engine of correction, in which persons convicted of the offence of being common scolds were placed. It was also called the castigatory or *cucking* stool,

which latter is said to signify in the Saxon language scolding stool, though frequently corrupted into *ducking* stool, from the circumstance of the offender when placed therein being plunged in the water for her punishment.—3 *Inst.* 219.

TRESAYLE. See tit. *Cosenage.*

TRESPASS (*transgressio*). This word in its most comprehensive sense signifies any transgression or offence against the law of nature, of society, or of the country in which we live; and this, whether it relates to a man's person or to his property. In its more limited and ordinary sense it signifies an injury committed with *violence*, and this violence may be either *actual* or *implied*; and the law will imply violence, though none is actually used, when the injury is of a *direct* and *immediate* kind, and committed on the person or tangible and corporeal property of the plaintiff. Of *actual* violence an assault and battery is an instance; of *implied*, a peaceable but wrongful entry upon a person's land. For the above offences an *action of trespass* lies; and this action is usually either an action of trespass *vi et armis*, or an action of trespass *on the case*; the former being brought to recover damages for wrongs done with direct violence, the latter to recover damages for wrongs not done with direct violence, or if done with direct violence, yet resulting from negligence, not from design.—3 *Bl.* 208; *Step. on Plead.* 17; *Smith's Action at Law*, 2.

TRESPASS ON THE CASE. Is the form of action adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another, unaccompanied with direct or immediate force. Thus, if a man, in throwing a log into the highway, strike a passer by, he may sue in an action of trespass for damages for the injury he may have sustained; but if *after the log had fallen and rested on the ground*, he stumble over it, and so receive an injury, then "trespass *on the case*," or, as it is commonly called, an action "on the case," would be his appropriate remedy. It is called an action *upon the case* (super casum), because the original writ by which this action was formerly commenced was not conceived in any fixed form, but was framed and adapted to the nature and circumstances of the case by virtue of the statute of Westminster 2.—See *Scott* v. *Shepherd*, 2 *Bl. Rep.* 892; 1 *Smith's L. C.* 210; *Leame* v. *Bray*, 3 *East*, 593; *Chandler* v. *Broughton*, 1 *Cr. & M.* 29; *Williams* v. *Holland*, 10; *Bing.* 113; 1 *Ch. on Pl.* 127, 6*th ed.*; *Com. Dig. tit. Action upon the Case* (*A.*)

TRESPASSANTS. Is used by Britton, c. 29, for passengers.—*Cowel.*

TREYTS (Fr.) Taken out, removed, or withdrawn. It is applied to a juror removed or discharged.—*F. N. B.* 159.

TRIAL (*triatio*). The mode of determining a question of fact in a court of law. Or it may in other words be defined to be the formal method of examining and adjudicating upon the matter of fact in dispute between a plaintiff and defendant in a court of law. There are various different species of trials, according to the nature of the subject or thing to be tried; these, however, will in general be found under their respective titles. A *trial at bar*, which is a species of trial now seldom resorted to excepting in cases where the matter in dispute is one of great importance and difficulty, is a trial which takes place before all the judges at the *bar* of the court in which the action is brought.—*Step. on Plead.* 84; *Lube's Equity*

Plead. 9; 3 *Bl.* 330; 1 *Arch. Pract.* 412.

TRIAL BY CERTIFICATE. See tit. *Certificate, Trial by.*

TRIAL BY RECORD. See tit. *Record.*

TRIDINGMOTE. The court held for a triding or trithing. See tit. *Trithing.*—*Cowel.*

TRIORS, TRIOURS, or TRIERS. See tit. *Triors of Jurors.*

TRIORS OF JURORS. Persons selected by the court to examine whether a challenge made to the panel of jurors or any of them be just or not. A challenge *to the favour* is grounded on some probable cause of suspicion, as acquaintance, or the like, the validity of which is determined by these *triors*. These, if the first juror be challenged, are two indifferent persons named by the court; if they find one man indifferent, he shall be sworn, and he with the two *triors* shall try the next, and when another is found indifferent and sworn, the two *triors* shall be superseded, and the two first sworn on the jury shall try the rest. — *Cowel; Smith's Action at Law*, 80.

TRISTIS, TRISTRIS, TRISTA (from the Fr. *traist*, i. e. trust). An immunity by which a man was freed from his attendance on the lord of a forest when he was disposed to chase therein, and was not compelled to hold a dog, follow the chase, nor stand at a place appointed, which otherwise he might have been under pains of amerciament for not doing. —*Manwood, part* 1, *p.* 86.

TRITHING, TRIDING, or TRIHING (Sax. *trithinga*). A district containing three or four hundreds, or the third part of a county; and those who governed these districts were thence called *trithing-reves.*—*Cowel.* See tit. *Thrithing.*

TRIUMVIR. A trithing-reve, or constable, or governor of a trithing. —*Cowel.*

TROVER (from the Fr. *trouver*, to find). Is that form of action adapted to try a disputed question of property in goods or chattels. It is called *trover*, because it is founded upon the supposition (which however is in general a mere fiction) that the defendant *found* the goods in question; and the declaration, after stating such a finding, proceeds to allege that the defendant *converted* them to his own use, and then claims damages for the injury which he has sustained by such wrongful conversion. In form the action is a fiction: in substance, a remedy to recover the value of personal chattels wrongfully converted by another to his own use. The form supposes the defendant may have come lawfully by the possession of goods. This action lies, and has been brought, in many cases where in truth the defendant has got the possession lawfully. It is an action of tort, and the whole tort consists in the wrongful conversion. Two things are necessary to be proved, to entitle the plaintiff to recover in this kind of action: 1st, property in the plaintiff; and, 2ndly, a wrongful conversion by the defendant. See *per Lord Mansfield in Cooper* v. *Chitty*, 1 *Burr.* 20; 1 *Smith's L. C.* 230.

TRUST (*fiducia*). A trust considered as a species of estate may be defined to be the right in equity to the beneficial enjoyment of lands of which the legal estate resides or is vested in some other person. He who has the right to the beneficial

enjoyment of them is termed the *cestui que trust;* and he in whom the legal estate is vested is termed the *trustee.* A trustee is regarded as a mere instrument of conveyance, and will be compelled by a court of equity to execute such conveyances of the land as the person entitled to the profits (i. e. the *cestui que trust*) shall direct, and to defend the title to the land, &c. A trust is now of the same nature as a *use* was before the stat. of 27 Hen. 8; and a *trustee* is now what the *feoffee to uses* was before that statute. — 1 *Cruise,* 410, 411. For the origin of *trusts* the reader is referred to title *Use.*

TUBMAN. See tit. *Pre-audience.*

TUN-GREVE (Sax. *tungeræva,* i. e. placed over a town). A reeve or bailiff. — *Cowel.*

TUNNAGE (*tunnagium*). See tit. *Tonnage.*

TURBAGIUM. See tit. *Turbary.*

TURBARY (*turbaria,* from *turba,* an old Latin word for turf). Turbary, or common of turbary, is the right or liberty of digging turf upon another man's ground.—2 *Bl.* 34; *Kitchin,* 94.

TURN or TOURN. The *sheriff's tourn* or rotation is a court of record, held twice every year before the sheriff in different parts of the county, being indeed only the *turn* of the sheriff to keep a court leet in each respective hundred. This therefore is the great court leet of the county, as the county court is the court baron.—4 *Bl.* 373; 4 *Inst.* 259.

TURNO VICECOMITUM. A writ that lay for those who were called to the sheriff's *tourn* out of their own hundred.—*Reg. of Writs,* 173; *Cowel.*

TYTHES (*decimæ*). See tit. *Tithes.*

U.

UDAL. This word as applied to property signifies much the same as the word *allodial,* being applied to right or property which a person possesses absolutely, or independently of any superior.—2 *Chitty's Bl.* 46, *n.*

UMPIRAGE. When matters in dispute are submitted to two or more arbitrators, and they do not agree in their decision, it is usual for another person to be called in as *umpire,* to whose sole judgment it is then referred; and the word *umpirage,* in reference to an *umpire,* is the same as the word *award* in reference to *arbitrators.* See tit. *Arbitration. Award.* —2 *Arch. Pract.* 1250.

UMPIRE. See tit. *Umpirage.*

UNCORE PRIST (*still ready*). Words used in a plea of tender (to an action brought against a man for a debt) to the effect "that he has always been ready and *still is ready*" (uncore prist) to discharge it.—3 *Bl.* 303; *Perkins, sec.* 783, 784.

UNDE NIHIL HABET. See tit. *Dote unde nihil habet.*

UNDER CHAMBERLAIN OF THE EXCHEQUER. An officer in the exchequer who cleared the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and the comptroller might see that their entries were true. He also made searches for all records in the treasury, and had the custody of Domesday book. There were two

officers of this name, but their office is now abolished.—*Cowel.*

UNDER ESCHEATOR (*sub-escheator*). See tit. *Escheator.*

UNDERLEASE. Is a lease granted by one who himself is only a lessee of the premises which he underlets. Thus, if A. grant a lease of land to B. for twenty-one years, and B. afterwards grants a lease of the same land to C. for fourteen years; here C. would be termed the *underlessee*, and the lease, by virtue of which he held the land, an *underlease.*

UNDERLESSEE. See tit. *Underlease.*

UNDER-SHERIFF (*sub-vicecomes*). See tit. *Sheriff.*

UNDRES. Minors or persons under age.—*Fleta, lib.* 1, *cap.* 9.

UNGELD. An outlaw, or a person out of the protection of the law, so that if he were murdered no *geld* or fine should be paid, or composition made by him who killed him.—*Cowel.*

UNIFORMITY OF PROCESS ACT. Is the title commonly given to the statute 2 Will. 4, c. 39, by which a more simple and uniform course of proceeding for the commencement of personal actions was established. Until the passing of that statute, the practice or forms of proceeding in the three superior courts at Westminster differed greatly from each other. The improvements introduced by this statute were founded on the report of the Common Law Commissioners, a body of distinguished men in the legal profession, appointed to consider the defects of the then existing system, with a view to their correction. In some important particulars, however, the enactments of the st. 2 Will. 4, c. 39, have been again altered by the more recent act of 1 & 2 Vict. c. 110; as, for instance, under the act of Will. 4, an action might be commenced by writ of summons *or* capias, whereas under the subsequent statute, which is still in force, it can only be commenced by summons.

UNION (*unio*). The combining or consolidating two churches into one. It also signifies the making one church subject to another, and one man rector of both; and making a conventual cathedral.—*Cowel.*

UNITY OF POSSESSION (*unitas possessionis*). Joint possession of two rights by several titles. As if I take a lease of land from a person at a certain rent, and afterwards I buy the fee-simple of such land; by this I acquire *unity of possession*, by which the lease is extinguished; because I, who before occupied the premises only in consideration of rent, do by the purchase of the fee-simple become lord of the same.—*Cowel.*

UNLAWFUL ASSEMBLY (*illicita congregatio*). See tit. *Riot.*

UNQUES PRIST (*always ready*). A plea by which a man professes himself *always ready* to do or perform that which the demandant requires.—*Kitchin*, 243; see tit. *Tout temps prist.*

UPPER BENCH, *Court of.* The Court of Queen's Bench was so called during the exile of King Charles the 2nd.—3 *Bl. Com.* 203.

USAGE. This word differs from custom and prescription, in that no man may claim a rent, common, or other inheritance by *usage*, though he may by prescription. See tit. *Prescription.*

USANCE. The time which, by the *usage* of different countries between which bills of exchange are drawn, is appointed for their payment. This is a calendar month, as from May 20th to June 20th, and what is termed *double usance* consists of two such months.—*Chitty on Bills; Tomlins.*

USE. As a general definition, a *use* may be defined to be a right to the beneficial enjoyment of lands. There is so much learning connected with the subject of uses, that it cannot with propriety be treated in detail here: the following outline of their history may however suffice to give a general idea of the nature and effect of a *use*. At an early period of our history we find the religious houses anxiously endeavouring to increase their dominions, which they were enabled to effect to an enormous extent. The evils which thence arose (independently of the undue power which such acquisitions conferred on those religious bodies) were manifest: the ultimate lord of the fee lost all the benefits arising from his seigniory, such as escheats, reliefs, wardships, &c. The landed property of the kingdom, instead of having due circulation, and passing from owner to owner, remained stationary in the hands of its undying possessor; the feudal services, which were the natural incidents to tenure, and which were of the utmost importance to the defence of the kingdom, were gradually withdrawn; and various other important changes were imperceptibly introducing themselves, tending more or less to defeat the privileges of the feudal lords, and to extend those of religious corporations. Lands conveyed or aliened to such bodies or corporations were termed alienations in *mortmain*, (*in mortua manu*); that is, they were conveyed or aliened into a *dead hand*; so called, because they *perpetually* remained in the hands of such corporations, never being able to revert to the donor, and scarcely ever being made the subject of future alienation. In consequence of such alienations, and to obviate the evils arising from them, certain statutes were passed, thence denominated the *statutes of mortmain*, by which the legislature endeavoured to prevent such alienations from being made. Among the various means which the ingenuity of the ecclesiastics devised to evade these statutes was that of a conveyance, by which lands were conveyed not immediately to themselves, but to some confidential person, *to the use* of themselves; that is, when a corporation purchased lands, such lands were conveyed to some confidential person of their own appointing, who held or disposed of them for the *use* or benefit of such corporation, the latter receiving all the profits and benefits derivable from the lands, and indeed generally being in the literal possession of them, while the seisin or legal possession remained in the hands of the *nominal* owner, to whom they were in the first instance conveyed. This system of conveying lands to a man to hold them for the *use* of another (or, in other words, the doctrine of *uses*), though originating with the clergy, soon diffused itself throughout society in general: he to whom lands were conveyed to hold them for another's *use* or benefit was called the *feoffee to uses* (from the name of the assurance used to convey the lands, which was called a *feoffment*), and he for whose *use* or benefit such lands were held was denominated the *cestui que use*: this distinction is important, as it constantly occurs in the various treatises upon the subject. The objects of uses were various; the most important one was to evade the oppressive burdens which were annexed to tenures, and the observance of which the courts of common

law rigidly enforced; for a *use*, not being regarded as an estate in the land, was not the object of tenure, and was therefore exempt from those burdens. When a use was intended to take effect, or to commence at some future period, or on the happening of some future contingent event, it was denominated a *contingent* or *springing use*. Thus, if lands are conveyed to the use of A. and B. after a marriage shall be had between them, this being a use limited to take effect on the happening of a contingent event, was thence called a contingent or springing use. When a person conveyed lands to the use of another, and such use, after having taken effect, or come into operation, *shifted* or changed to some other person, this was denominated a *secondary* or *shifting* use. Thus, supposing a man to convey lands to the use of his intended wife and her eldest son for their lives; the wife, upon her marriage, would take the whole use in severalty; but, upon the birth of a son, the use would also *shift* to him, and would be executed jointly between them; and this is a *shifting use*. When lands were conveyed to the use of a person, and such use expired, or could not vest, it returned or *resulted* to the grantor, and was thence styled a resulting use. Thus, if A. conveyed lands to B. to the use of C. for life, without adding any additional words, then on the death of C. the use would return or *result* to A. the grantor, provided there were no circumstances to afford an inference that B. was to have the land for his own use after the death of C.; and this was termed a *resulting use*. By way of recapitulation, a use is a right to the beneficial enjoyment of land, the legal estate or possession of which resides in another person. Uses were devised by the ecclesiastics, in order to evade the statutes of mortmain; they were afterwards commonly resorted to by the landed proprietors of the kingdom, in order to elude the burdens annexed to the feudal tenures, the use or beneficial enjoyment of land (or in other words, *a use*) not being regarded by the common law of the land as an object of tenure, and consequently not liable to its burdens. To remedy the evils which arose from the existence of this species of double ownership in lands, which the doctrine of uses introduced, the stat. of Henry 8 was passed, commonly called the *statute of uses*, or the statute *for transferring uses into possession*; which, after reciting the various evils occasioned by the system of uses, enacts that when any person shall be *seised* of lands, &c. to the use of any other person, &c. such person, &c. who is entitled to the use of the lands shall be considered as seised or possessed of the lands himself, and that the estate of the person *seised to uses* (i. e. in the legal possession of lands for another's use), shall be deemed to be in him or them who have the use. The object of this statute was to create a unity of ownership, or in other words, to prevent the legal estate being in one man, and the equitable right to the beneficial enjoyment of it in another; that is, to prevent lands being conveyed to one man to hold them for the use or benefit of another. The statute effected this, as will be seen, by its enacting, that he who had the *use* of lands should also be deemed to be seised or possessed of them; or in other words, that the estate of the feoffee to uses should be considered to be in him who had the use; thus uniting both, and constituting one ownership in the person of the real owner, namely, in the *cestui que use*. This is what the enactors of the statute aimed at; but, as we shall presently see, their object was defeated by an artificial construction put upon the words of the statute by the judges who presided in our courts of judica-

ture at that period. It may be as well to observe, previously to entering further upon the subject, that when the above statute annexed the *legal estate* in the lands to the *use* of the lands, or, in other words, united the legal estate of the *feoffee to uses* to the use of the *cestui que use*, it was said to *execute the use*. This phrase is important to be clearly understood, as the nature of a *trust*, which is shortly going to be considered, cannot be explained without making use of this expression. So that when the statute effected its object in creating a unity of ownership by annexing the legal estate or possession to the use, the statute was then said to *execute the use*. Thus, before the statute, if A. conveyed lands to B. to the use of C., B. would have the legal estate, that is, he would be regarded *in law* as the legal owner of the lands, and C. would merely have the use or the *equitable* right to the enjoyment of the land, so that there would have been two distinct species of ownerships, that of B.'s, and that of C's. But, after the statute, if A. conveyed lands to B. to the use of C., the legal estate would not, as was the case before the statute, remain in B., but by the operation of the statute would pass immediately to C., unite itself with the use, and constitute one single ownership. In this instance the statute would be said to *execute the use in C.*; that is, it would unite the possession and the use in the person of the *cestui que use*, viz. in the person of C.; and hence it is that the statute is said to *transfer uses into possession*. We will now endeavour to show how this statute was evaded, and the consequences of its evasion. The judges, in our courts of common law, in construing the statute of uses, regarded words more than things, the form of the statute more than its spirit, and laid it down, that a use could not be limited upon a use. Thus, on A.'s conveying lands to B. to the use of C. to the use of D. (which is termed limiting a use upon a use), they held that the statute executed only the first use, and that the second was a mere nullity. This artificial decision of the judges gave birth to the most important consequences; it revived the doctrine of uses under a new denomination, viz. under that of *trusts*. Thus, in the above instance, it was manifest that C. was not intended to have the beneficial enjoyment of the lands, and the courts of equity, in admitting that the use of D. was not executed by the statute, yet regarded it in the nature of a *trust*, which in conscience C. was bound to perform. Hence then the judges evaded the statute, and out of their evasion arose the doctrine of trusts. Thus, if A. conveys lands to B. to the use of C., to the use of (or in trust for) D., the statute, as before construed, executes the use in C., that is, it operates only upon the first use, and is supposed to have no influence over the use of D. Thus was the statute evaded, and uses continued to be created under the new denomination of trusts; the *feoffee to uses* being thenceforth termed the *trustee*, the *cestui que use* being termed the *cestui que trust*, and the *use* itself a *trust*. Hence will be perceived the truth of the common remark, that uses were before the statute what trusts are now; in short, that the words *uses* and *trusts* are convertible terms. The reader who is desirous of acquiring further information on this important subject, is referred to *Saunders on Uses and Trusts*, and to *Hayes' Introduction to Conveyancing*.

USER. Is the act of *using* or enjoying any profit or benefit to be taken from or upon the land, or any easement to be enjoyed upon or over any land or water. And in law, the effect of such *user*, (if continued for a period sufficiently long and under

circumstances which indicate a right on the part of the person so *using* the land,) is to establish a prescriptive claim ever after to enjoy the same profit or easement —*Co. Litt.* 115 a; *Cowp.* 108; 10 *East*, 476; 11 *East*, 372; *st.* 2 & 3 *W.* 4, *c.* 71; 4 *Ad.* & *El.* 869; 6 *M.* & *W.* 795; 11 *Ad.* & *El.* 58½, 688, 788; 8 *Ad* & *El.* 161, 778; 4 *Tyr.* 509; 2 *Steph. Bl.* 34—40. See also tit. *Prescription.*

USER DE ACTION. The pursuing or bringing an action,—*Bro.* 6½; *Cowel.*

USES, — COVENANT TO STAND SEISED TO. A species of conveyance so called, by which a man seised of lands, covenants, in consideration of blood or marriage, that he will stand seised of the same to the use of his child, wife, or kinsman, for life, in tail, or fee.—2 *Bl.* 338; 4 *Cruise*, 24.

USES,—DEEDS TO LEAD OR DECLARE. Deeds made to declare or particularize the uses to which lands are designated, of which a fine has been levied and a recovery suffered; for fines and recoveries could not have been made to answer the purpose of family settlements (wherein a variety of uses and designations is very often expedient) unless their force and effect had been subjected to the direction of other more complicated deeds, wherein particular uses might be more particularly expressed. These deeds, when made previous to the fine or recovery, are called deeds to *lead* the uses, if subsequent, deeds to *declare* them.—2 *Bl.* 363; 4 *Cruise.* See also tit. *Leading a Use.*

USES, SUPERSTITIOUS. A devise of lands or goods is said to be to *superstitious uses* when they are designated or appropriated to the maintenance of a chaplain or priest to pray for the souls of the dead, or of a lamp in a chapel, or a stipendiary priest, and the like.—23 *H.* 8, *c.* 10.

USHER (from the Fr. *huissier*, a door keeper of a court). A subordinate officer in the courts of law. The chief usher in the Court of King's Bench holds his office by letters patent under the great seal for two lives, and executes it by three deputies.—1 *Arch. Pract.* 25.

USHER OF THE BLACK ROD. The Gentleman Usher of the Black Rod is an officer of the House of Lords appointed by letters patent from the crown. His duties are, by himself or deputy, to desire the attendance of the Commons in the House of Peers when the royal assent is given to bills either by the queen in person or by commission; to execute orders for the commitment of persons guilty of breach of privilege; and also to assist at the introduction of peers when they take the oaths and their seats.

USUCAPTION (*usucaptio*). The enjoying a thing by long continuance of time, or receiving the profits thereof. Also a long possession or prescription.—*Cowel.*

USUFRUCT (*usufructus*). An usufruct has been defined to be that real right in another's property which entitles a party to reap all the fruits of the thing, and in general to have the whole use and enjoyment of it, as far as is practicable, without injury to its substance. He who is so entitled to enjoy the fruits of another's property is termed the *usufructuary*, in contradistinction to the actual proprietor of the thing.—*Just. Inst.* 2, 4, *Dig.* 7; *Douelli Comm. Jur. Civ. lib.* 10; *Mackeldy's Civ. Law, by Kauffman.*

USUFRUCTUARY. See tit. *Usufruct.*

USURA MARITIMA. See tit. *Fœnus Nauticum.*

USURIOUS CONTRACT. See tit. *Usury.*

USURPATION OF ADVOWSON. An injury consisting in the absolute ouster or dispossession of the patron, and happens when a stranger who has no right, presents a clerk, and he is thereupon admitted and instituted.—3 *Bl.* 242.

USURPATION OF FRANCHISES OR OFFICES. The unjustly claiming or usurping any office, franchise or liberty.—3 *Bl.* 262.

USURY (*usura*). An unlawful contract on the loan of money to receive the same again with exorbitant increase; that is, not only to receive the principal sum again, but also an *exorbitant interest* by way of compensation for the use of such principal sum.—2 *Bl.* 454; 4 *Bl.* 157; *Cowel.*

UTAS (*octava*). The eighth day following any term or feast: as the *Utas* of St. Michael, the *Utas* of St. Hilary, &c.— 51 *H.* 3; *Cowel.*

UTERINUS FRATER. A brother by the mother's side.—2 *Bl.* 232.

UTFANGTHEF (*Fur extra captus, scilicet extra dominium vel jurisdictionem.*) An ancient privilege or royalty granted by the king to a lord of a manor, empowering him to punish a *thief* dwelling *out* of his liberty, and committing theft out of the same, if he be taken within his fee.—*Bract. lib.* 2, *tract.* 2, *c.* 35. See tit. *Infangthef.*

UTLAGATO CAPIENDO QUANDO UTLAGATUR IN UNO COMITATU ET POSTEA FUGIT IN ALIUM. A writ to take an outlaw who has been outlawed in one country and afterwards flees to another.—*Reg. Orig.* 133; *Cowel.*

UTLAGATUS, UTLAGH. See tit. *Outlawry.*

UTLAWRY. See tit. *Outlawry.*

UTLEPE. The escape of a robber or felon.—*Fleta, lib.* 1, *c.* 47; 18 *H.* 6, *par.* 2, *m.* 22.

UTRUM. See tit. *Juris Utrum.*

UTTER, *To.* In law, signifies to put in circulation, to offer or tender to another man; and is used in reference to forged instruments or counterfeit coin. Thus, by statute 11 Geo. 4 & 1 Will. 4, c. 66, it is enacted, that the forging or *uttering* of any Exchequer bill, Bank of England note, bill of exchange, deed, transfer of stock, &c. &c., knowing it to be forged and with intent to defraud, shall be felony; and by 2 Will. 4, c. 34, s. 7, it is provided that "if any person shall tender, *utter* or put off any false or counterfeit gold or silver coin, knowing the same to be counterfeit, he shall be guilty of a misdemesnor and be imprisoned for any term not exceeding a year.—See *Rex* v. *Jones*, 9 *Car. & P.* 761; 7 *Car. & P.* 122.

UTTER BAR (or Outer Bar). Is the bar at which those barristers practise who have not been raised to the dignity of queen's counsel. These junior barristers are said to plead *without* the bar, while those of the higher rank are admitted to seats *within* the bar, and address the court or a jury from a place reserved for them and divided off by a *bar.* See tit. *Utter Barristers.*

UTTER BARRISTERS (*juris consulti*). Barristers at law in general who plead *without* the bar. They are called *utter* barristers, i. e. pleaders

without the bar, to distinguish them from the *benchers*, or those who have been readers, and who are sometimes admitted to plead *within* the bar, the same as king's and queen's counsel are.—*Cowel.*

V.

VACATION (*vacatio*). The interval between each term is termed the vacation; that is, between the end of one term and the beginning of the next. The time which elapses between the death of a bishop or other spiritual person and the appointment of his successor is also called vacation.—3 *Bl.* 276; *Westm.* 1, *c.* 21.

VADIUM MORTUUM (*dead pledge*). See tit. *Mortgage.*

VADIUM PONERE. To take security, bail or pledges for the appearance of a delinquent in some court of justice.—*Cowel.*

VADIUM VIVUM. A living pledge. When a man borrows a sum of money of another (suppose £200), and grants him an estate, as of £20 *per annum*, to hold till the rents and profits shall repay the sum so borrowed; in this case the land or pledge is said to be *living;* it subsists and survives the debt; and immediately on the discharge of that, reverts back to the borrower. It is called a *vivum vadium*, or living pledge, in contradistinction to *mortgage.*—2 *Bl.* 157. See tit. *Mortgage.*

VAGABONDS and VAGRANTS. For the offences which bring persons under either of these denominations the reader is referred to 5 Geo. 4, c. 83, ss. 3 and 4.

VAGRANTS. See tit. *Vagabonds* and *Vagrants.*

VALEBANT COUNT. See tit. *Quantum meruit.*

VALOR MARITAGII (*value of marriage*). The meaning of this may be collected from the following passage. During the prevalence of the feudal tenures the guardian was at liberty to exercise over his infant ward the right of *marriage* (*maritagium*, as contradistinguished from *matrimony*), which in its feudal sense signifies the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. For while the infant was in ward, the guardian had the power of tendering him or her a suitable match, without *disparagement* or inequality; which if the infants refused they forfeited the value of the marriage (*valorem maritagii*) to their guardian; that is, so much as a jury would assess, or any one would *bona fide* give to the guardian for such an alliance: and if the infants married themselves without the guardian's consent, they forfeited double the value, *duplicem valorem maritagii.*—*Litt.* 110; 2 *Bl.* 70.

VALUABLE CONSIDERATION. The distinction between a *good* and a *valuable* consideration is, that the former consists of such as blood, or of natural love and affection; as when a man grants an estate to a near relation from motives of generosity, prudence, and natural duty; and that the latter consists of such a consideration as money, marriage, or the like, which the law esteems an equivalent given for the grant.—2 *Bl.* 296.

VARIANCE (*variantia*). In its most comprehensive signification signifies a *disagreement* between things that ought to agree. Thus a disagreement in any material fact between the affidavit of debt and the writ of capias, or between the writ and the declaration, is termed a *variance;*

i. e. they *vary* or disagree. But it is perhaps more frequently applied to a discrepancy or disagreement in some particular point or points between the allegation of a party in his pleadings, and on which issue has been taken, and the evidence produced by him in support of it. Such disagreement is termed a *variance*, and is as fatal to the party on whom the proof lies, as a total failure of evidence; the jury being bound upon a *variance* to find the issue against him. For example, A. brought an action of covenant against B. for not repairing the premises demised to him, pursuant to the covenant in the lease; and stated the covenant in his declaration, as a covenant to "*repair when and as need should require;*" and issue was joined on a traverse of the deed alleged. The plaintiff at the trial produced the deed in proof, and it appeared that the covenant ran thus — to repair "when and as need should require, *and at farthest after notice;*" the latter words having been omitted in the declaration; and this was held to be a *variance*, because the additional words were material, and qualified the legal effect of the contract. — *Stephen on Pleading*, 93, 94; 9 *G.* 4, *c.* 15.

VASSAL (*vassalus*). Originally signified a feudal tenant or grantee of land. It seems doubtful what the exact relationship was that subsisted between lord and vassal: some writers are of opinion that they stood to each other in the relation of landlord and tenant, and to a certain extent were the companions of each other; while others affirm that the vassal was little better than the slave or bondman of his lord. The state or condition of a vassal is termed *vassalage*.—2 *Chitty's Bl.* 52, *n.* 6.

VASSALAGE. See tit. *Vassal.*

VASSALERIA. Vassalage or the tenure of vassals.—*Cowel.*

VASTO (*waste*). See tit. *Waste, Writ of.*

VASTUM. A waste or common lying open to the cattle of all tenants who have a right of commoning.—*Cowel.*

VEAL MONEY. A yearly rent paid by the tenants within the manor of Bradford, in the county of Wilts, to their lord in lieu of veal, which was formerly paid in kind.—*Cowel.*

VECTIGAL JUDICIARIUM. Is applied to money or fines paid to the king to defray the expenses of maintaining the courts of justice and protection of the people. — 3 *Salk.* 33; *Cunningham.*

VEJOURS (*visores*, from the French *voir*, to see). Those persons who are sent by the court to take a view of any place in question for the better decision of the right. Those also are so called who are sent to view those who *essoin* themselves *de malo lecti*, in order to see whether they be really so ill that they cannot appear, or whether they only counterfeit illness. —*Cowel; Bract. lib.* 5, *tract.* 2, *c.* 10, 14.

VENDITIONE EXPONAS. A judicial writ directed to the sheriff, commanding him to sell goods which he has taken into his hands by virtue of a former writ (but to which writ he had returned that he had taken the goods, but that they remained in his hands for want of buyers), in order to satisfy a judgment against the defendant.—1 *Arch. Pract.* 594; *Reg. Jud.* 33.

VENDOR and VENDEE. A *vendor* is the seller of any thing, and a vendee

the purchaser of any thing.—2 *Chan. Cas. 5*; *Cunningham.*

VENIRE FACIAS. A judicial writ directed to the sheriff of the county in which a cause is going to be tried, commanding him *to cause* a jury of twelve men *to come* from the body of his county to try the issue between the litigating parties. —1 *Arch. Pract.* 399; 3 *Bl.* 352.

VENIRE DE NOVO. A fresh or *new* venire, which the court grants when there has been some impropriety or irregularity in returning the jury, or where the verdict is so imperfect or ambiguous that no judgment can be given on it.—1 *Arch. Pract.* 447; *Smith's Action at Law*, 103.

VENIRE FACIAS TOT MATRONAS. See tit. *De Ventre inspiciendo.*

VENTER (*the belly*). Is used in law as designating the maternal parentage of children. Thus, where in ordinary phraseology we should say that A. was B.'s child by his first wife, he would be described in law as "by the first *venter*," e. g. "A. died seised, leaving two infant daughters by different *venters*."—*Doe d. Barnett* v. *Keen*, 7 *T. R.* 886.

VENTER INSPICIENDO. See tit. *De Ventre inspiciendo.*

VENUE (from *vicinetum* or *vicinia*). The county in which an action is intended to be tried, and from the body of which the jurors are accordingly to be summoned, is so called. This county or *venue*, as it is termed, when fixed upon and determined by the plaintiff, is always inserted in the margin of his declaration, which is termed "*laying the venue*" in such a county; and the action itself is then said to be "laid" or brought "within that county."

VERDEROR (*viridarius*, from the French *verdurier*). An officer of the king's forest, who is sworn to maintain and keep the assises of the forest, and to view, receive and enrol the attachments and presentments of all manner of trespasses of vert and venison in the forest.—*Manwood, c. 6, s. 5.* See also tit. *Vert.*

VERDICT (*veredictum*). A verdict is the unanimous judgment or opinion of the jury on the point or issue submitted to them. A verdict is either *general* or *special*. It is said to be general when it is delivered in *general* words with the issue; as if the issue be on a plea of *not guilty*, then a general verdict would be that the defendant *is guilty*, or *is not guilty*, as the case may be. It is said to be *special* when the jury instead of finding the *negative* or *affirmative* of the issue, as in the case of a general verdict, declare that all the facts of the case as disclosed upon the evidence before them, are in their opinion proved, but that they are ignorant in point of *law* on which side they ought upon these facts to find the issue; that if upon the whole matter the court shall be of opinion that the issue is proved for the plaintiff, they find for the plaintiff accordingly, and assess the damages at such a sum, &c.; but if the court are of an opposite opinion, then *vice versâ*. This special verdict is then, together with the whole proceedings on the trial, entered on record; and the question of law, arising on the facts found, is argued before the court in bank, and decided by that court as in case of demurrer. A verdict is called a *privy verdict* when the judge has left or adjourned the court; and the jury being agreed, in order to be delivered from their confinement, obtain leave to give their verdict privily to the judge out of court; which privy verdict, however, is of no force, unless afterwards affirmed by a public

verdict given openly in court.—*Boote's Suit at Law*, 273; *Stephen on Pleading*, 100; 3 *Bl.* 377.

VERECUNDIUM. Injury, trespass, damage, &c.—*Somner on Gavelkind*, 174.

VERGE (*vergata*). The court of marshalsea had jurisdiction within the *verge* of the court, which in this respect extended for twelve miles round the king's place of residence. The word *verge* is also used to signify a rod or stick by which one is admitted tenant to a copyhold estate, by holding it in one's hand and swearing fealty to the lord of the manor.—3 *Bl.* 76; *Old Nat. Brev.* 17.

VERIFICATION. Is a certain formula with which all pleadings containing new affirmative matter must conclude. It is in itself an averment that the party pleading is ready to establish the truth of what he has set forth. It is either common or special. The common verification runs in the following form: "And this the plaintiff (or defendant) is ready to verify." A special verification is used only when the matter pleaded is to be tried by record or by some other method than the ordinary mode of trial by jury; and in the case of a trial by the record, would be in the following form: "And this the plaintiff (or defendant) is ready to verify by the said record." When new matter is introduced into a pleading, it must always conclude with a *verification*.—*Steph. Plead.* 479; *Statute* 10 *Edw.* 3, 23; *Finch's Law*, 359. See also tit. *Et hoc paratus est verificare.*

VERT (Fr. *green*). In general signifies every thing that grows and bears green leaf within the forest. There are two sorts of *vert* in every forest, viz. *over vert* and *neather vert*. Over vert, sometimes also called *hault boys*, is all manner of great wood, as well such as bear fruit as do not. Old ash and holly trees are accounted *over vert*. *Neather vert*, sometimes also called *south boys*, comprises all kinds of underwood, bushes, thorns, gorse and such like. Whether fern and heath are included under the term *neather vert*, seems doubtful. Manwood argues that they are not; Fleetwood and Hesket maintain the contrary opinion. The vert which grows in the king's demesne woods is termed *special vert*. From this word *vert*, *a viridate*, is derived the word *verderor*, being him who takes charge of the vert in the forest.—See *Manwood*, *c.* 6, *ss.* 2, 4, 5.

VERY LORD and VERY TENANT (*verus dominus et verus tenens*). Those who stand in the immediate relation of lord and tenant, and between whom there exists a privity of estate. — *Cowel*; *Old Nat. Brev.*

VEST (*vestire*). To invest, to deliver possession, to give seisin, to enfeoff, &c.—*Spelman.*

VESTED INTEREST. An *interest*, property or estate in possession, or in which a person has a present and immediate interest, as distinguished from an interest whose existence is dependant upon a contingency, and which may never vest in the party expecting it. Thus a *vested* remainder is that description of remainder by the creation of which a present interest passes to the party; and though the remainder itself, *ex vi termini*, can only be enjoyed *in futuro*, yet a present, immediate and disposable interest, as remainder-man, is at once conveyed, and therefore the remainder is called a *vested* remainder.—See tit. *Remainder*. See also 6 *Jur.* 619, and tit. *Vested Legacy.*

VESTED LEGACY. A legacy is

said to be *vested* when the words of the testator, making the bequest, convey a present or an immediate interest to the legatee in the legacy. Thus a legacy to one, *to be paid* when he attains the age of twenty-one years, is a *vested* legacy, because it is given unconditionally and absolutely, and therefore vests an immediate interest in the legatee; and if such legatee die before that age, his representatives shall receive it out of the testator's personal estate at the time that it would have become payable had the legatee himself lived. But if the legacy were given *when* or *if* the legatee attain a certain age, it would not be *vested*; and if the legatee were to die before that age, the legacy would lapse, and his representatives could make no claim to it. For in this case the bequest is a kind of conditional one, depending upon the happening of a certain event, viz. upon the legatee's attaining the specified age.—2 *Bl.* 513.

VESTED REMAINDER. See tit. *Remainder*.

VESTURE (*vestura*). Is metaphorically used in the law to signify admittance into possession or seisin. —*Cowel.*

VETITUM NAMIUM (*a forbidden distress*). The phrase is applied to a distress of beasts or goods made by the bailiff of a lord, and the lord forbids his bailiff to deliver them when the sheriff comes to replevy them, and to that end drives them to places unknown.—*Cowel.*

VI ET ARMIS. See tit. *Strong Hand.*

VI LAICA REMOVENDA. A writ that lies where two persons contend for a church, and one of them enters into it with a great number of laymen, and keeps out the other *vi et armis*; then he who is so kept out shall have this writ directed to the sheriff, by virtue of which he shall remove such lay force. But the sheriff must not remove the incumbent out of the church, whether he is rightfully there or not, but only the force or laymen that accompanied him.—*Les Termes de la Ley; Cunningham.*

VICAR (*vicarius*). The priest or parson of every parish is termed a *rector*, unless the predial tithes be appropriated, and then he is called a *vicar*, that is, has the part of a *vice* rector. The distinction, therefore, between a parson and vicar is this, that the parson has for the most part the whole right to all the ecclesiastical dues in his parish; but a vicar has generally an appropriator over him, entitled to the best part of the profits, and to whom he is in effect perpetual curate, with a standing salary.—1 *Bl.* 388; *Cowel.*

VICAR-GENERAL. Is an ecclesiastical officer in each diocese, appointed by and acting under the authority of the bishop. He formerly was only occasionally constituted during the bishop's absence from his diocese; but now he is the perpetual representative of the bishop in certain matters, such as the granting of licences, &c., where there is nothing of contention or litigation between the parties. He appears to have no criminal jurisdiction, and therefore cannot inquire, in the place of the bishop, into such offences as quarrelling, brawling or smiting, &c.—*Rogers' Eccl. Law*, 143, 144; *Gibs. Introd.* 23; *Thorpe* v. *Mansel*, 1 *Hag. Con.* 4, *in notis.*

VICARIAL TITHES. Those tithes to which vicars are entitled, and which are generally called privy or small tithes.—1 *Bl.* 338; see title *Tithes.*

VICARIO DELIBERANDO OCCASIONE CUJUSDAM RECOGNITIONIS, &c. A writ that lay for a spiritual person who was imprisoned on forfeiture of a recognizance without the king's writ. — *Reg. of Writs*, 147; *Cowel.*

VICE-CHAMBERLAIN. See tit. *Chamberlain.*

VICE-COMES. The ancient title for a sheriff.—*Cowel.*

VICINAGE (from the Fr. *voisinage*, neighbourhood). Common because of *vicinage* or neighbourhood, signifies the right exercised by the inhabitants of two townships which lie contiguous to each other, of intercommoning one with another; the beasts of the one straying mutually into the other's fields without any molestation from either.—2 *Bl.* 33; see tit. *Common.*

VICINETUM. See tit. *Vicinage.*

VICIS ET VENELLIS MUNDANDIS. A writ that lay against a mayor or bailiffs of a town, &c. for the clean keeping of their streets. — *Reg. of Writs*, 267; *Cowel.*

VICONTIEL. Of or belonging to a sheriff. Thus *vicontiel* writs are such as are triable in the county or sheriff's court: *vicontiel* jurisdiction, that jurisdiction which belongs to the officers of a county, as to sheriffs, coroners, escheators and the like.—*Old Nat. Brev.* 109; 3 *Bl.* 238.

VICOUNT or VISCOUNT (*vicecomes*). Sheriff.—See tit. *Vice-comes.*

VICOUNTIEL JURISDICTION.—See tit. *Vicontiel.*

VIDELICET or SCILICET. The words *to wit*, or *that is to say*, so frequently used in pleading, are technically called the *videlicet* or *scilicet*; and when any fact alleged in pleading is preceded by or accompanied with these words, such fact is, in the language of the law, said to be *laid under a videlicet.* The use of the *videlicet* or *scilicet* is to point out, particularize or render more specific that which has been previously stated in general language only; also to explain that which is doubtful or obscure. It has been called by Lord Hobart an "handmaiden to another clause." As to the *effect* of laying a fact under a *videlicet* in pleading, see *Dakin's case*, 2 *Wms. Saund.* 290 *d*, *and notes*, *ed.* 1824; *Stukeley* v. *Butler*, *Hob.* 171, 172; 1 *Chit. Pl.* 317, *ed.* 1836; 3 *M. & Sel.* 173; 2 *Ad. & E.* 483; 7 *Ad. & E.* 1; *Cro. Eliz.* 848; 2 *Co. Lit.* 180 *b*, *n.* 1.

VIEW (from the Fr. *voir*, to see). In real actions a defendant may demand a *view*, that is, a sight of the thing, in order to ascertain its identity and other circumstances. As if a real action be brought against a tenant, and such tenant does not exactly know what land it is that the demandant asks, then he may pray *the view*, which is that he may *see* the land which the demandant claims.—3 *Bl.* 299; *F. N. B.* 178.

VIEW OF FRANKPLEDGE (*visus franci plegii*). The office which the sheriff in his county court, or the bailiff in his hundred, performed in looking to the king's peace, and seeing that every man was of some pledge.—*Bract. lib.* 2, *c.* 5, *num.* 7; 4 *Bl.* 279; see tit. *Frankpledge.*

VIEW OF AN INQUEST. Is a view or inspection taken by a jury, summoned upon an inquisition or *inquest*, of the place or property to which the inquisition or inquiry refers. See tit. *View.*

VILL. Seems to bear the same

signification in law as a town or tithing, and each of them is said to have had originally a church and celebration of divine service, sacraments and burials; though this seems to be rather an ecclesiastical than a civil distinction, and hence it is that the word *vill* has by some writers been described as a parish or a manor. It appears to have some different significations; but its more ordinary meaning was that of a town; and the Statute of Exeter (14 Edw. 1) so uses it, in making frequent mention of *vills*, *demivills* and hamlets. Sir Henry Spelman conjectures entire *vills* to have consisted of ten freemen or frankpledges (hence tithing), and *demivills* of five. — *Co. Litt.* 115 *b*; *stat.* 14 *Edw.* 1; *Spel. Gloss.* 274; 1 *Inst.* 115; *Bract. lib.* 4, *c.* 31; 1 *Bl.* 114; 1 *Steph. Bl.* 115.

VILLAINS or VILLEINS (*villanus*). Were a sort of people under the Saxon government in a condition of downright servitude, who were used and employed in the most servile works, and are even said to have belonged to the lord of the soil, like the cattle or stock upon it. They seem to have been those who held what was termed the folk-land, from which they were removable at the lord's pleasure. These villeins, belonging principally to lords of manors, were either villeins *regardant*, that is, annexed to the manor or land; or else they were in *gross*, or at large, that is, annexed to the person of the lord, and transferable by deed from one owner to another. The tenure by which villeins held their land, and their condition in general, was termed *villenage*.—2 *Bl.* 92; *Cowel*; *Les Termes de la Ley*.

VILLANIS REGIS SUBTRACTIS REDUCENDIS. A writ that lay for the restoring the king's bondmen, who had been carried away by others out of his manors to which they belonged.—*Reg. Orig.* 87; *Cowel.*

VILLANOUS JUDGMENT (*villanum judicium*). Such a judgment as threw the reproach of villany and shame on those against whom it was given; and by which they were discredited and disabled as jurors or witnesses; forfeited their goods and chattels and lands for life; had their lands wasted, their houses razed, their trees rooted up and their bodies committed to prison.—1 *Hawk. P. C.* 193; *Lamb. Eiren.*, 4 *Bl.* 136.

VILLE. See tit. *Vill.*

VILLEIN. See tit. *Villains.*

VILLENAGE. See tit. *Villains.*

VINCULO MATRIMONII, *Divorce a.* A divorce from the bond of matrimony. See tit. *Divorce.*

VIOLENT PRESUMPTION. See tit. *Presumption.*

VIRGE, *Tenant by.* See tit. *Verge.*

VIRIDARIO ELIGENDO. A writ that lay for the choice or *election* of a *verderor* in the forest. — *Reg. Orig.* 177; *Cowel.*

VIRTUTE CUJUS (*by reason whereof*). That part of the declaration in an action which, after setting forth the various grievances complained of, proceeds to point out the injurious results which have flowed therefrom, is frequently technically spoken of as the "*virtute cujus*," from the words employed therein, which are "by reason whereof." Thus, in an action for diverting water from the plaintiff's mill, the declaration, after stating the plaintiff's right to the water, and particularizing the injurious act complained of, proceeds to point out the injury which the plaintiff has

sustained in consequence, in the following manner: "and the plaintiff, *by reason of the premises*," hath been prevented from working his said mill in so beneficial a manner as he heretofore has, and otherwise could and would have done, &c. &c.—See *Doctr. Pl.* 351; 11 *Rep.* 106; *Steph. Plead.* 221, *5th edit.*

VISCOUNT (*vicecomes*). See tit. *Viscount.*

VISITATION (*visitatio*). The office performed by the bishop of every diocese once in every three years, or by the archdeacon once in every year, of visiting the churches and their rectors. These *visitations* were instituted for the purpose of correcting any abuses or irregularities that might arise therein; and the persons who perform such visits are termed the *visitors.*—3 *Bl.* 480; *Cowel.*

VISITOR. See tit. *Visitation.*

VISNE (*vicenetum*). Neighbourhood, &c. See tit. *Venue.*

VISUS. See tit. *View.*

VIVARY (*vivarium*). Is generally used in law to signify a warren, park, piscary, or the like.—2 *Inst.* 100.

VIVA VOCE. A viva voce examination means an *oral* examination.

VIVUM VADIUM. See tit. *Vadium Vivum.*

VOIDANCE (*vocatio*). This word is applied to a benefice void of an incumbent. See tit. *Avoidance.*

VOIRE DIRE. To examine a witness upon his oath of *voire dire* is to examine him on oath to speak the truth touching matters in which he is thought or suspected to be an interested witness. Formerly, it appears to have been necessary, for the party making objection to the witness on this ground, to enter upon this *voire dire* examination previously to the examination of the witness in chief; and it seems that he would have been too late to take the objection after the witness was sworn in chief. Now, however, it seems that a witness may be examined on his *voir dire* at any time during the trial. —See 1 *T. R.* 719; 4 *Burr.* 2251; 2 *Campb.* 14; *Holt, N. P. C.* 314; *Phil. on Ev.* 149, *8th ed.*; 11 *M. & W.* 685; 3 *Dowl. N. S.* 352; *Moo. & M.* 320.

VOLUMUS. The first word of a clause in the king's writs of protection and letters patent.—*Cowel.*

VOLUNTARY CONVEYANCES. Conveyances are termed *voluntary* when they are made without any good or valuable consideration. See tit. *Valuable Consideration.*

VOLUNTARY CURTESY. A voluntary act of kindness. An act of kindness performed by one man towards another, of the free will and inclination of the doer, without any previous request, or promise of reward made or offered by him who is the object of the curtesy. From such a voluntary act of kindness, the law implies no promise on the part of him who is benefited by such act, that he will make any remuneration or return for the same; for if it were otherwise, one man might impose a legal obligation upon another against his will. If however the curtesy or act of kindness was performed at the instance or request of the party benefited, then the law implies a promise on the part of the latter to make a remuneration or return for such act. Hence, the meaning of the phrases that a "voluntary curtesy will not support an assumpsit," but that a "curtesy moved by a previous re-

quest will." — See *Lampleigh* v. *Braithwait*, *Hob.* 105; *Smith's Leading Cases*, 67; 3 *Bos. & P.* 250, *in notis*; *Durnford* v. *Messiter*, 5 *M. & Sel.* 446.

VOLUNTARY JURISDICTION. Those courts are said to have a *voluntary* jurisdiction which are merely concerned in doing or settling what no one opposes, and which keep an open office for that purpose (as granting dispensations, licenses, faculties, and other remnants of the papal extortions), but do not concern themselves with administering redress to any injury.—3 *Bl.* 66.

VOLUNTARY OATHS. Are such as persons take in extra-judicial matters and not regularly in a court of justice, or before an officer invested with authority to take the same.—4 *Bl.* 137.

VOLUNTARY SETTLEMENT. A settlement made without good or valuable consideration is so termed. See tit. *Valuable Consideration*; also tit. *Voluntary Conveyances.*

VOLUNTARY WASTE. See tit. *Waste.*

VOTES AND PROCEEDINGS. In the houses of parliament the clerks at the table make brief entries of all that is actually done; and these minutes, which are printed from day to day for the use of members, are called the "Votes and Proceedings of Parliament." The votes and proceedings of the House of Commons are published by the speaker's authority, and sold to the public as well as distributed among the members themselves; but those of the House of Lords are not published nor sold, although they can be obtained as a favour by persons desiring them. From these "votes and proceedings" the journals of the house are subsequently prepared by making the entries at greater length; but in neither is any notice taken of the speeches of a debate.

VOUCHE, VOUCHER, VOUCHER. See tit. *Recovery.*

VOX. This word is used by Fleta and Bracton, to signify an infamous person, or one who is not admitted to be a witness.—*Cowel.*

VULGARIS PURGATIO. See tit. *Ordeal.*

W.

WADSET. In the language of Scotch law is the conveyance of land in pledge for or in satisfaction of a debt or obligation, with a reserved power to the debtor to recover his lands on payment or performance. The lender is called the *wadsetter*, and the borrower the *reverser*. It is somewhat analogous to our mortgage. See *Bell's Dict.* 1030.

WAGE (*vadiare*). The giving a pledge or security for the performance of anything; as to *wage deliverance*, to *wage law*, &c.—*Les Termes de la Ley.*

WAGER OF BATTLE. A *pledge* given by the defendant to try the cause by battle; by which the party accused fought his accuser, under the apprehension and hope that heaven would give the victory to him who had the right.—3 *Bl.* 337.

WAGER OF LAW (*vadiatio legis*). Trial by *wager of law* is a species of trial by which the defendant puts in sureties that at such a day he will make his law, that is, take the benefit which the law has allowed him. For our ancestors considered that there were many cases in which an

innocent man, of good credit, might be overborne by a multitude of false witnesses, and therefore established this species of trial, by the oath of the defendant himself, for if he absolutely swore himself not chargeable, and appeared to be a person of reputation, he was acquitted.—3 *Bl.* 341; *Cowel.*

WAGER POLICY. A policy of insurance, in which the party whose life or property is insured, has no interest. It is so called because in effect it amounts simply to a *wager* between the insurers and the insured, upon the contingency mentioned in the policy. *Wager policies*, though for some time permitted in our law, are now forbidden to be made on ships by 19 Geo. 3, c. 37, and upon other matters by 14 Geo. 3, c. 48; the latter act declaring "that no insurance shall be made by any person or persons, &c. *on the life or lives of any other person or persons, or on any other event or events whatsoever*, wherein the person or persons for whose use, benefit, or on whose account such policies shall be made, shall have *no interest, or by way of gaming or wagering.*"—*Godsall* v. *Boldero*, 9 *East*, 72; 2 *Smith*, *L. C.* 156, 157, 165; 1 *M. & W.* 32; *Cowp.* 737; 9 *Bing.* 320.

WAGERING POLICIES. The practice of insuring large sums, without having any property on board, which were called insurances, interest or no interest, and also of insuring the same goods several times over, were denominated *wagering policies.* —2 *Bl.* 460; see tit. *Wager Policy.*

WAIFS (*bona waviata*). Such goods as a thief has feloniously stolen, and from apprehensions of being taken, or for his own ease, throws them away, or leaves them behind; that is, he *waives* them. This species of property usually belongs to the king, or to the lord of the manor, by prescription or grant.—*Britton*, *cap.* 17; 1 *Bl.* 296; *Les Termes de la Ley.*

WAIVE (*waviare*). To forsake. But this word is said to belong more properly to a woman, who is said to be *waived* as a man is said to be *outlawed.*—*Staundf. Pl. Cor.* 26; *Reg. Orig.* 132. See also the two following titles.

WAIVER. The waiving, passing over, or omitting to take advantage of anything. It is frequently used in reference to irregularities in legal proceedings; thus, a *waiver* of irregularity signifies an intention not to take any advantage of such irregularity.—1 *Keb.* 225; 1 *Arch. Pract.* 149.

WAIVING A TORT. Is the act of passing over or omitting to take advantage of or to obtain redress for a *tort* or injury. This is frequently done in cases where the tort or injury is accompanied with an illegal possession or detention of another's goods. Thus, where the sheriff, under a writ of execution, has seized the goods of a bankrupt after the issuing of the fiat, the assignees of such bankrupt can bring trover against the sheriff for the wrongful conversion of goods; but they are not bound to sue him in trover; for they may *waive the tort* and bring an action for money had and received for the proceeds of the goods."—1 *Smith*, *L. C.* 240; 3 *Wils.* 304; 8 *Bing.* 43; 2 *Bing. N. C.* 343; 1 *B. & C.* 97, *per Abbott*, *C. J.*

WAPENTAKE (from the Sax. *weapen*, armour, and *tac*, moved or taken). The same as the word *hundred*, viz. a certain district or division of territory.—*Cowel*; 1 *Bl.* 116.

WARD (*custodia*). In its most ordinary legal signification signifies an infant under the guidance and pro-

tection of a guardian. So during the prevalence of the feudal tenures, the heir of the king's tenant, who held in capite, was termed his *ward* during his nonage or minority. — See tit. *Wardship.*

WARDEN OF THE FLEET PRISON. Was an officer who took charge of the prison, and in whose custody and under whose care the prisoners were. By 5 & 6 Vict. c. 22, the Fleet prison was consolidated with the Queen's Bench, and the office of the warden abolished.

WARDMOTE (*wardmotus*). A court belonging to every *ward* in London, commonly denominated the *ward-mote-court.*—4 *Inst.* 249.

WARDSHIP. A right which the feudal lord claimed, when any one of his tenants *in capite* died, leaving an heir under the age of twenty-one, being a male, or fourteen, being a female, of having the custody of the body and lands of such heir, without accounting for the profits until such heir had attained the age of twenty-one in males, and sixteen in females; and the lord was then called *guardian in chivalry.* —2 *Bl.* 67; *Litt.* 103.

WARDS AND LIVERIES, *Court of.* A court instituted by stat. 32 Hen. 8, c. 46, to superintend injuries respecting reliefs, wardships, *primer seisin,* and other advantages which accrued to the king on the death of any of his tenants during the continuance of the military tenures.—3 *Bl.* 257; *Cowel.*

WARRANDICE. In the Scotch law signifies the obligation by which a party conveying a subject or a right is bound to uphold that subject or right against every claim, challenge, or burden arising from circumstances prior to the conveyance. It is either personal or real. Personal is that by which the grantor and his heirs are personally bound. Real, is that by which certain lands, called warrandice lands, are made over eventually in security of the lands conveyed. Warrandice is also either *simple* or *absolute.* Simple, when the grantor shall do nothing inconsistent with the grant; absolute, *contra omnes mortales,* by which the grantor is liable for every defect in the subject or right which he has granted.—*Bell's Sc. Law Dict.*

WARRANT. An authority or precept under the hand and seal of some justice, setting forth the time and place of making, and the cause for which it is made, and directed to some constable or other peace officer, requiring him to apprehend some offender; or to search for some property in case of stolen goods, &c. and the like.—*Hawk. P. C.*; 4 *Bl.* 290, 291. See also the following titles.

WARRANT IN CHANCERY. Is an order directed to the parties in a chancery suit requiring them to perform various acts incident to or in relation to the suit, as a warrant to consider the decree, a warrant to proceed, a warrant to settle the report, &c. Warrants are usually issued by one of the masters of the Court of Chancery.—2 *Smith's Ch. Prac.* 115.

WARRANT OF ATTORNEY. A written power or authority directed to an attorney or attornies, empowering them to appear for the party executing it, and to receive a declaration for him in an action, at the suit of a person therein mentioned, and thereupon to confess the same, or to suffer judgment to pass by default. This instrument is commonly given by a defendant to a plaintiff when he acknowledges the right of the plaintiff's action, but is unable from pecuniary embarrassments to satisfy the demand.—2 *Arch. Pract.* 717.

WARRANT TO SUE AND DEFEND. Formerly the parties in an action were obliged to appear in court *in person*, unless permitted by a special *warrant* from the crown, called a *dedimus potestatem de attornato faciendo*, to appoint an attorney to *sue* or *defend* for them; or unless, after appearance, they had appointed a deputy called a *Responsalis*, to act for them, and which in some instances the court allowed them to do.—1 *Arch. Pract.* 61.

WARRANTIA CHARTÆ. A writ that lay for a man who was enfeoffed of lands with warranty, and he was afterwards sued for the same in an assize or other action in which he could not vouch against the warrantor, to compel him to assist him with a good plea or defence, or else to render damages and the value of the land if recovered against the tenant. *F. N. B.* 135; *Les Termes de la Ley.*

WARRANTIA CUSTODIÆ. A judicial writ that lay for him who was challenged to be a *ward* to another, in respect of land said to be holden by knight service, which, when it was bought by the ancestors of the *ward*, was *warranted* to be free from such thraldom; and therefore this writ lay against the *warrantor* and his heirs.—*Reg. Ind.* 36; *Cowel.*

WARRANTIA DIEI. A writ directed to the justices requiring them not to record a man as a defaulter, who, after having had a day assigned him to appear in court to an action, was in the meantime, by command, employed in the king's service, so as to be prevented appearing on such day in court.—*Glan. lib.* 1, *c.* 8; *Cowel.*

WARRANTY (*warrantia*). A covenant by which the grantor of lands or tenements for himself and his heirs *warrants* and secures them to the grantee. So that when either an ancestor, being the rightful tenant of the freehold, conveyed the land to a stranger and his heirs, or released the right in fee-simple to one who was already in possession, and superadded a *warranty* to his deed, it was held that such warranty not only bound the warrantor himself to protect and assure the title of the warrantee, but it also bound his heir. Warranty, as applied to land, was either *lineal* or collateral to the title of the land. *Lineal* warranty was where the heir derived, or might by possibility have derived, his title to the land warranted either from or through the ancestor who made the warranty: as where the father or an elder son, in the life of the father, released to the disseisor of either themselves or the grandfather with warranty, this was lineal to the younger son. *Collateral* warranty was where the heir's title to the land neither was nor could have been derived from the warranting ancestor; as where a younger brother released to his father's disseisor with warranty, this was collateral to the elder brother. The word *warranty*, as applied to goods and chattels, is termed a *personal warranty*. Thus an implied warranty is annexed to the sale of all goods and chattels, so that a purchaser may have a satisfaction from the seller, if he sells them as his own, and his title proves deficient, without any *express* warranty for that purpose.—4 *Cruise*, 27; 2 *Bl.* 300, 451.

WARREN (*warrena*). A place privileged by prescription or grant of the king for the preservation of game. The franchise of *free-warren*, which was introduced to protect game, gave the grantee a sole and exclusive power of killing such game so far as his warren extended, on condition of his preventing other persons from killing it. This franchise has now

fallen into disregard.—*Les Termes de la Ley*; 2 *Bl.* 38.

WASTE (*vastum*). The destroying, by a tenant for life or years, any of those things which are not included in the temporary profits of the land, and which would tend to the injury or loss of the person entitled to the inheritance. Waste is distinguished into *voluntary* and *permissive* waste; the former being an act of commission, the latter of omission. *Voluntary* waste chiefly consists in felling timber-trees, pulling down houses, opening mines or pits, changing the course of husbandry, destroying heir looms, &c. *Permissive* waste chiefly consists in permitting or suffering the buildings on an estate to decay, and such like acts of omission. The word *waste* is also used to signify that portion of a lord's manor which being uncultivated, served for public roads, and for common of pasture to the lord and his tenants.—1 *Cruise*, 118, 122; 2 *Bl.* 282.

WASTE, WRIT OF. A writ or action which lies for him who has the immediate estate of inheritance in reversion or remainder against the tenant in possession, for committing waste on the lands which he holds, to the injury of such remainder-man or reversioner. This action is, however, seldom brought, having given way to a much more expeditious and easy remedy, by an *action on the case in the nature of waste*.—3 *Chitty's Bl.* 227, *n.* 5.

WASTORS. A kind of thieves so called.—4 *H.* 4, *c.* 27; *Cowel.*

WATER-BAILIFFS. Officers in port towns, whose duty it is to search ships, &c. Also an officer belonging to the city of London, who has the supervising and search of fish brought thither, and the collecting of the toll arising from the Thames, and arresting men for debt, or other personal or criminal matters, on the river Thames.—*Cowel.*

WATER ORDEAL. See tit. *Ordeal.*

WAVESON. See tit. *Flotsam.*

WAYS. A species of incorporeal hereditaments, and consist in the right of going over another man's ground. A *way* may be defined to be a private road or passage through another man's ground; but when considered as a species of hereditament, it signifies rather the interest or right which a man possesses in such way, arising out of his title to use it.—2 *Bl.* 35; *Cowel*, tit. *Chemin.*

WAYS AND MEANS, *Committee of.* After the House of Commons has voted a supply to his majesty, and settled the *quantum* of that supply, they usually resolve themselves into what is termed a *committee of ways and means*, which is a committee formed for the purpose of devising by what ways and means the supply voted is to be raised.—1 *Bl.* 307.

WEDBEDRIP (from the Saxon *wed*, a covenant, *biddan*, to pray or desire, and *rippan*, to reap or mow). A customary service which inferior tenants performed for their lord, by cutting corn or doing other harvest duties.—*Cowel.*

WELSH MORTGAGE. Those mortgages are so called by which the proviso for redemption does not oblige the mortgagor to pay the money on a particular day, but allows him to do it at any indefinite time, thus giving him a perpetual right of redemption.—2 *Cruise*, 83.

WERA or WERE. A pecuniary mulct, fine, or amerciament.—*Cowel.*

WERREGILDUS (*wergildus*). The price or value of a man who was killed; part of which was paid to the king for the loss of his subject, part to the lord whose vassal he was, and part to the next of kin of the deceased.—*Cowel;* 4 *Bl.* 188.

WHITE RENTS (*reditus albi*). Rents reserved in silver or white money were anciently called white rents or *blanch-farms*, in contradistinction to rents reserved in work, grain, or baser money, which were called *reditus nigri* or *blackmail*.—2 *Bl.* 42; 2 *Inst.* 19.

WHOLE BLOOD. A kinsman of the *whole-blood* is he who is derived not only from the same ancestor, but from the same couple of ancestors. For as every man's own blood is compounded of the bloods of his respective ancestors, he only is properly of the whole or entire blood with another who has (so far as the distance of degrees will permit) all the same ingredients in the composition of his blood that the other had.—2 *Bl.* 227.

WIDOW OF THE KING (*vidua regis*). The widow of the king's tenant in capite, who after her husband's death was obliged to recover her dower by the writ *de dote assignanda*, and could not marry again without the king's consent.—*F. N. B.* 263.

WIDOW'S CHAMBER. The widow's apparel and the furniture of her bed chamber, which by the custom of London she is entitled to on the death of her husband, is denominated *widow's chamber*.—2 *Bl.* 518.

WIDOW'S QUARENTINE. See tit. *Quarentine* or *Quarentaine*.

WILL and TESTAMENT. A will or testament is a written instrument by which a person expresses what he *wills* or wishes to be performed after his death. Wills are technically divided into *wills* or *devises* and *wills* or *testaments*. A will or devise is applied to the disposal of *real* estate, to take effect after the death of the owner. A will or testament is applied to the disposal of a *personal* estate, to take effect after the death of the owner. A *codicil* is an instrument by which a person having made his will adds something to it, or modifies his former disposition, and is considered as part of the will itself which it so alters or modifies.—2 *Bl.* 11, 12; 9 *Byth. Convey. Par. & Stew.* 17.

WILL, ESTATE AT. An estate at will is the interest which a person has in lands or tenements during the will or permission of another; and such person is called, in reference to the estate which he so holds, a *tenant at will*. What was formerly considered as a tenancy at will has however in modern times been construed to be a tenancy from year to year, and from a general occupation such a tenancy will be inferred unless a contrary intention appear.—1 *Cruise*, 257; 2 *Chitty's Bl.* 145, 147, *n.* 11.

WIT, *To*. See tit. *Videlicet*.

WITE. A Saxon word signifying punishment, penalty, mulct, fine, &c. —*Cowel*.

WITENA-GEMOT or WITTENA-GEMOT (*conventus sapientum*). A great council or convention of wise men among the Saxons, corresponding with our parliament.—*Cowel;* 1 *Bl.* 147, 148.

WITH COSTS. When an application to the court or to a judge is dismissed "with costs," it means that the party, whose application was so dismissed, is to bear his own, and

also such costs as the opposite party has been put to in reference to such application. So where, in the Court of Chancery, the Lord Chancellor orders the dismissal of the defendants in the suit "with costs," it signifies that the defendants who are so dismissed from the subject matters of the suit, are to have their costs paid them by the opposite or unsuccessful parties.

WITHERNAM (from the Sax. *wyther*, altero, and *nam*, captio). A forbidden taking or driving a distress to some hold, or out of the county, so that the sheriff upon a *replevin* cannot re-deliver them to the party distrained. In which case the writ of *withernam* or *de vetito namio* is directed to the sheriff for the taking as many of the beasts or goods of him who did thus unlawfully distrain, into his custody until he makes deliverance of the things he so distrained. The word is said by Bracton to signify an unlawful distress made by him who has no right to distrain. Smith in his *Republ. Anglor.* says that it signifies the same as *reprisal*; and hence it would appear that the word signifies a taking by way of reprisal other cattle or goods from the distrainor in lieu or place of those which he has unlawfully taken and withheld from the party who seeks to replevy them.—*Smith de Republ. Angl. c.* 10; *Britton, c.* 27; *Les Termes de la Ley.*

WITHOUT DAY, *Going*. When judgment is given for the defendant in an action, he is said "to go thereof without day;" that is, he is finally dismissed the court without any further day being appointed for his reappearance.

WITHOUT PREJUDICE. Is a memorandum or condition frequently attached to the communications which pass between attorneys or solicitors in the conduct of a cause or other legal proceedings. The phrase is employed to intimate that any statement made by the solicitor is in no respect to *prejudice* or to be used against such solicitor's client.

WITHOUT THIS, THAT &c. See tit. *Absque hoc*; also tit. *Special Traverse.*

WITTENAGEMOTE. See tit. *Witena-gemot.*

WOOD-GELD (*wood-geldum*). Money paid to the foresters for the cutting of wood within the forest. The immunity or freedom from this payment by the king's grant is also sometimes so called.—*Crompton*, 157; *Les Termes de la Ley.*

WOODMOTE. The ancient name of a forest court which since the statute of *Charta de Foresta* has been called the *court of attachment*, and held every forty days; but was formerly held at the will of the chief officers of the forest at no specified periods.—*Manwood; Cowel.*

WOOD-PLEA-COURT. A court held twice in the year in the forest of Clun in the county of Salop, for determining all matters of wood and agistment there.—*Cowel.*

WOODWARD (*woodwardus*). An ancient officer of the forest whose duty it was to prevent offences being committed against vert and venison, or to present the same when committed to the forest court.—*Cromp. Jur.* 201.

WORDS OF LIMITATION. See tit. *Limit.*

WORTHIEST OF BLOOD. In the law of descents sons are considered more *worthy* than daughters, that is, they take precedence of them, and

are called worthiest of blood.—2 *Bl.* 313.

WRECK (*wreccum maris*). The goods and cargo which are thrown upon the land from any ship which has been wrecked or lost at sea. In order to constitute a legal wreck the goods must come to land. These goods or wrecks are a portion of the king's revenue, although they are frequently granted out to lords of manors as a royal franchise.—2 *Inst.* 126; 1 *Bl.* 290.

WRECKFREE or WRECKFRY. An exemption from the forfeiture of shipwrecked goods and vessels to the king. This immunity was granted by charter of King Edward I. to the barons of the Cinque Ports.—*Cowel.*

WRIT (*breve*, or Sax. *writan*, i. e. *scribere*). A writ is a sort of mandatory letter from the king, directed to some person or persons, commanding them to do some particular act. Writs are distinguished into *original* and *judicial* writs. They are termed *original* when they issue out of the High Court of Chancery and are *tested* (i. e. witnessed) in the name of the king himself. Writs are termed *judicial* when they issue out of a court of common law and are *tested* in the name of the chief justice of the court out of which they issue. Until within the last few years personal actions in the courts of common law were commenced by an *original* writ, and all other writs or process issued during the pending of the suit (that is, between the issuing of the original and the termination of the suit), were denominated *mesne process*, that is, *intermediate* process, in contradistinction to the *original* process, and what was denominated the *final* process, that is, writs of execution. Notwithstanding, personal actions are now no longer commenced by *original*, but by a writ called a *writ of summons*, yet the word *mesne* is frequently applied to such writ of summons, as though it were still a subsequent or *intermediate* writ, instead of being, as it in fact is, the first and in effect the original process in the action.—*Boote's Suit at Law*, 54; *Stephen on Pleading*, 21.

WRIT OF ASSISTANCE. A writ issuing out of the exchequer, to authorize any person to take a constable or other public officer to seize goods or merchandize prohibited and uncustomed.

WRIT OF CAPIAS. See tit. *Capias.*

WRIT OF ENTRY. See tit. *Entry, Writ of.*

WRIT OF ERROR. See tit. *Error.*

WRIT OF INQUIRY. A judicial writ, directed to the sheriff, commanding him to *inquire* the amount of damages which a party who has recovered judgment in another court ought to have assessed. The nature and use of this writ may be further elucidated by the following observations. When a judgment has been recovered in an action, but such judgment is not final, but establishes the *right* of the plaintiff only, leaving the amount of damages sustained by him to be yet ascertained, then such amount must be assessed by a jury. The judgment pronounced by the court in such a case is, that the plaintiff *ought* to recover his damages; but because the court knows not what damages he has sustained, the sheriff is commanded that, by the oath of twelve honest and lawful men of his county, he diligently *inquire* the same, and return the inquisition into court; and the process or writ directed to the sheriff for this purpose is thence called a *writ of inquiry.*—2

Arch. Pract. 739; *Smith's Action at Law*, 89, 90.

WRIT OF REBELLION. See tit. *Commission of Rebellion.*

WRIT OF RIGHT (*breve de recto*). A writ of right is a writ that lay to recover lands in fee simple and unjustly withheld from the true proprietor; and was the great and final remedy for him who was injured by *ouster* or privation of his freehold. It is frequently termed a *mere writ of right*, to distinguish it from other writs of a somewhat similar character. It was considered the highest writ in the law, and lay only for an estate in fee-simple, and not for him who had a less estate. When this writ was brought in the court baron of the lord of whom the lands were holden, it was called open or *patent;* but, if he held no court, or had waived his right, it might be brought in the courts by writ of *præcipe* originally, and then it was called a writ of right *close*, being directed to the sheriff, and not to the lord. There was also a little writ of *right close, secundum consuetudinem manerii*, which lay for the king's tenants in ancient demesne, and others of a similar nature, to try the right of their lands and tenements in the court of the lord exclusively.—3 *Bl.* 193, 194.

WRIT OF RIGHT CLOSE. See tit. *Writ of Right.*

WRIT OF RIGHT OF ADVOWSON. A writ to try the right to an advowson when the rightful owner had been ousted or dispossessed of the same. This was a peculiar writ of right, framed for the special purpose, and if a man recovered therein, he regained the possession of his advowson, and was entitled to present at the next avoidance.—*F. N. B.* 30; 3 *Bl.* 243.

WRIT OF RIGHT OF DOWER. A writ that lay for a widow, who was deforced of her dower, to recover the same.—*F. N. B.* 147; 3 *Bl.* 183.

WRIT OF RIGHT PATENT. See tit. *Writ of Right.*

WRIT OF SUMMONS. See tit. *Summons, Writ of.*

WRIT OF TRIAL. By the stat. 3 & 4 Wm. 4, c. 42, s. 17, when an action is depending in any of the superior courts of law for any debt or demand, in which the sum sought to be recovered and indorsed on the writ of summons does not exceed twenty pounds, the court or a judge, upon being satisfied that the trial will not involve any difficult question of fact or law, may direct that the issue or the issues joined shall be tried before the sheriff of the county where the action is brought, or before any judge of a court of record for the recovery of debt in such county. When a cause is tried before the sheriff or local judge under the above statute no nisi prius record is necessary, but a writ, termed a *writ of trial*, issues, directed to the sheriff or judge, commanding him to try the issue or issues by a jury to be summoned by him, and to return such writ, with the finding of the jury thereon indorsed, at a day certain, in term or vacation, to be named in such writ; and thereupon such sheriff or judge shall summon a jury, and shall proceed to try such issue or issues accordingly.—*Arch. Pr.*; *Bag. Pr.*; 3 & 4 *Wm.* 4, *c.* 42, *s.* 17.

WRITS CLOSE. See tit. *Close Rolls.*

WRONG (*injuria*). See tit. *Tort.*

WYDRAUGHT. A word frequently used in leases, signifying a gutter,

waterspout, or aqueduct.—*Cunningham.*

WYTE. See tit. *Wite.*

Y.

YEAR. The space of a year is a determinate and well-known period, consisting commonly of 365 days (or one solar revolution); for though in bissextile or leap-years it consists properly of 366 days, yet, by the stat. 21 Hen. 3, the increasing day in the leap-year, together with the preceding day, shall be accounted for one day only. With the word "year," a twelvemonth is synonymous, and therefore a lease for a twelvemonth is good for the whole year; but if the lease were for twelve months, it would only hold for forty-eight weeks. Usually, the law takes no notice of the fractional parts of the recognized and ordinary periods or divisions of time. Thus, half-a-year consists of 182 days, and a quarter of a year of 91, the remaining hours being in either case rejected.—6 *Rep.* 62 *a*; *Co. Litt.* 135 *b*; *Cro. Jac.* 167; *Yelv.* 100; *Dy.* 345 *a*; 1 *Stephen, Bl.* 264; *Impey, Mod. Pl.* 139.

YEAR AND DAY (*annus et dies*). A time that in many cases determines a right, and in some cases works a usucaption, in others a prescription. Thus, in the case of an estray, if the owner, after proclamations having been made, does not challenge it within that time, it is forfeited; so it is with respect to wrecks and various other cases. So in cases of appeals, a year and a day is given to prosecute them, &c. A person wounded must die within a year and a day in order to constitute the offender who inflicted such wound guilty of murder.—1 *Bl.* 292, 297; *Cowel*; 4 *Bl.* 197.

YEAR, DAY, AND WASTE (*annus, dies et vastum*). A privilege which the king formerly had of taking into his hands all the lands and tenements in fee-simple belonging to persons attainted of petit treason or felony, for the period of a *year and a day*, and committing therein what *waste* he pleased during that time: as by pulling down their houses, extirpating their gardens, ploughing their meadows, cutting down their woods, and the like.—2 *Inst.* 37; *Cowel.*

YEAR-BOOKS. Are books containing the reports of cases adjudged or determined in the courts of law from the beginning of the reign of Edw. 2 to the end of Edw. 3, and from the beginning of Henry 4 to the end of Henry 8. They are called *year-books* because they were published *annually* from the notes of certain persons who received a stipend from the crown for this employment.—2 *Reeves, Hist. E. L.* 357.

YEARS, ESTATE FOR. An estate for years is defined by Blackstone to be "a contract for the possession of lands or tenements for some determinate period." This definition, however, it is presumed, is not strictly accurate. An estate for years may rather be defined to be the interest which a person has in lands or tenements for some determinate period. Thus supposing A. to grant B. a lease of certain lands for twenty-one years; here the *interest* which B. acquires in such lands, by virtue of the lease granted him by A. is the *estate*; and such interest or estate, having a *determinate duration*, viz. twenty-one years, constitutes it an *estate for years*; so that the *contract* is not properly speaking the *estate*; but is only the *instrument* by virtue of which the estate is created. The person who holds, or is in possession of an estate for years, is called in

reference to his estate a *tenant for years*.—2 *Bl.* 140. See tit. *Estate*.

YEVEN, or YEOVEN (*given*). These are words frequently used at the end of old indentures: as "*yeoven* (i. e. given) the day and year first above written." It is derived from the Saxon *eovian*, i. e. to give.—*Cowel*.

YIELDING and PAYING. See tit. *Reddendum*.

YORK, *Custom of*. A custom which prevails there in reference to the effects of an intestate, which, after payment of his debts, are in general divided according to the ancient universal doctrine of the *pars rationibilis*.—2 *Bl.* 518. See tit. *Reasonable Part*.

APPENDIX.

OUTLINE OF AN ACTION AT LAW.

An action is defined to be the means provided by law for obtaining redress for a civil injury: it consists in various formal proceedings which have been introduced from time to time, and the nature and meaning of which it is the object of the present outline to explain. There are various kinds of actions, which are distinguished, according to their nature, by the terms *real*, *personal*, and *mixed*. Real actions are such as are brought for the recovery of *real* property only; that is, for lands, tenements, or hereditaments. *Personal* actions are such as are brought for the recovery of *personal* property; that is, for the recovery of goods and chattels, or for some pecuniary satisfaction, or other redress for an injury done to a party. *Mixed* actions are such as partake in some degree of the nature of *both* the former species of actions, and yet cannot be said to belong *exclusively* to either of them. Such actions are usually brought for the recovery of lands, tenements, or hereditaments, and *also* for a pecuniary compensation in the nature of damages for the injury sustained by being withheld from them; so that with reference to the recovery of the lands, they partake of the nature of *real* actions, while with reference to the recovery of the pecuniary compensation or personal recompense, they partake of the nature of *personal* actions, and hence are properly called *mixed*.

As it is our intention to sketch the outline of only one of these species of actions, we shall select for that purpose a personal action, because this species of action being of more frequent occurrence than the other two, is likely to be of more practical use. There are various

kinds of personal actions, distinguished according to their peculiar characteristics by corresponding terms. The most common are those of *covenant, assumpsit, debt, detinue, replevin, trespass* and *trespass on the case.* The action of *covenant* is brought to recover damages for the breach of a *covenant,* i. e. a contract entered into by deed. The action of *assumpsit* for the recovery of damages for the non-performance of a promise not made by deed, and this is termed a simple contract. The action of *debt* for the recovery of some *debt.* The action of *detinue* for the recovery of any goods or chattels, or deeds or writings, which are *detained* from the party so seeking the recovery of them. The action of *replevin* is brought for the recovery of damages for the illegal taking and *detaining* any goods or chattels. The action of *trespass* for the recovery of damages for some *trespass* committed; that is, for some wrong or injury done to a party accompanied with violence; which violence may be either *actual* or *implied;* thus, an assault upon a man is an *actual* violence, but an illegal entry upon a party's land, even though done peaceably, is considered as an *implied* violence in law; an action of *trespass on the case* is brought for the recovery of damages for some wrong or injury done to a party to which the other actions do not exactly apply, and it is therefore called an action of trespass *on the case,* that is, an action of trespass brought on the peculiar circumstances of the case; and as these circumstances are very various, this kind of action is of a very comprehensive nature, including in it many other species, which it would be foreign to the present subject to enumerate. We will now endeavour to trace the proceedings in an ordinary action of assumpsit from its commencement to its termination, first of all premising that the person who brings or prosecutes an action is termed the *plaintiff,* and the person against whom it is brought, the *defendant.* We will suppose then, that one John White, a printer, of Fleet Street, wishes to recover fifty pounds from one William Stephens, a bookseller, of Farringdon Street, and that he has applied to his attorney, whom we will name (for the sake of illustration) James Blackstone, to commence an action against him for that purpose. Mr. Blackstone, after having written to Mr. Stephens, requesting payment of the fifty pounds to no effect, immediately commences the action. This he does by *issuing a writ of summons,* which is a judicial writ proceeding out of the court in which the plaintiff intends prosecuting his action, directed to the defendant, commanding him to appear in court, &c. The following is a form of the writ of summons which the plaintiff's attorney, Mr. James

Blackstone, would issue against the defendant, William Stephens. In the following form and in all the subsequent proceedings which we are about to illustrate, we have supposed the plaintiff to have brought his action in the Court of Queen's Bench. The form is as follows:—

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, defender of the faith, to William Stephens, of Farringdon Street, in the city of London, bookseller,* greeting: We command you that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Queen's Bench, in an action on promises at the suit of John White: And take notice that in default of your so doing, the said John White may cause an appearance to be entered for you and proceed therein to judgment and execution. Witness, Thomas Lord Denman, at Westminster, the —— day of ——, in the year of our Lord ——. N. B. This writ is to be served within four calendar months from the date thereof, including the day of such date and not afterwards.

The following indorsements must be made on the writ.

This writ was issued by James Blackstone, of No. 20, Cheapside, in the City of London, attorney for the said John White.

The plaintiff claims fifty pounds for debt, and one pound fourteen shillings for costs. And if the amount thereof be paid to the plaintiff or his attorney within four days from the service hereof further proceedings will be stayed.

The mode of issuing a writ of summons is simply by taking it to the proper officers and getting it signed and sealed, which are done as a matter of course by the officers appointed for that purpose on payment of the fees. This signing and sealing give efficacy to the writ, by stamping it with the authority of the court, and thus communicating to it the virtue of a judicial mandate. When this writ is issued, a copy of it is made, and such copy is delivered to (or *served on*, as it is called) the defendant. When the writ has been so *served* or delivered to the defendant, the party who made such service or delivery is required to signify the same by making an indorsement on the writ in the following form:—

This writ was served by me William Davis on William Stephens, on —— [*the day of service*] day of ——, 1846.

* Although it is usual to insert the trade or profession of the defendant in the writ, it is not *necessary*.

The next step in the proceedings is the defendant's *appearance* in court in pursuance of the terms of the writ, which, on reference to the form above given, will be seen to contain a command to the defendant to enter an appearance within eight days. We will now endeavour to explain the meaning of the phrase *entering an appearance*. It must be obvious that when a party seeks redress for an injury committed by another, and requires the interference of a court of judicature thereon, that such court cannot adjudicate upon the injury alleged to have been sustained, or upon the subject-matter of dispute between the contending parties, without hearing what such parties have respectively to say for themselves. Hence then it becomes necessary that the parties should *appear* in court, in order that the plaintiff may be enabled to make his allegations, and that the defendant may have an opportunity of answering them. This would evidently be the *natural* course of procedure even in a primitive state of society; but then the question must occur to every one, how is the offending party (that is, the *defendant*) to be compelled to make his appearance in court? The party who seeks redress (i. e. the *plaintiff*) would, we may readily imagine, appear in court without any compulsory process; but the defendant, who in many cases fears the result of the legal conflict, would gladly absent himself from the tribunal before which the plaintiff wishes to arraign him. Hence then a compulsory process becomes necessary in the shape of a mandate, issuing under the authority of the court, by which the defendant is commanded to make his *appearance* in court at a certain day under peril of the court's displeasure in the event of disobedience. The writ of summons is a mandate of this nature, and issued expressly for the above purpose, viz. to compel the defendant to make his appearance in court. Before legal proceedings had arrived at their present degree of refinement, the point in dispute, instead of being subjected to the preparatory ordeal of the present machinery of an action at law, was at once brought before the judicial tribunal and disposed of. For this purpose the plaintiff and defendant usually *appeared* in court personally, and made their respective allegations and answers until the subject-matter of dispute had arrived at something like a definite point. Now however the case is very different, the plaintiff and defendant no longer appear personally in court to make their allegations and answers, but they usually appoint an official person to represent them (i. e. an *attorney*), through whom they *appear* in court (not literally but in an

artificial manner as will be explained), and through whom they make their respective allegations and answers, not *orally* as of old, but according to prescribed forms in writing. Having premised thus much we will proceed to show how the defendant appears in court now, and the meaning of the phrase *entering an appearance*. A defendant is now considered as appearing in court when he recognises the authority of the court by obeying the command contained in the writ of summons; which he does by leaving a memorandum termed an *appearance* with one of the officers of the court appointed to receive the same, who *enters* it in a book kept for that purpose, and the entry of this memorandum is thence termed the *entering of an appearance*. It may be as well to observe that throughout this outline, when it is said that the plaintiff and the defendant do such and such a thing, it must be understood that they do it through their attornies. So that when a defendant in an action is said to have *entered an appearance*, it signifies that his attorney has deposited a memorandum so termed with the proper officer of the court, who has made an *entry* of it in a book kept for that purpose. The following is the form of an appearance, which we will now suppose the defendant to enter.

In the Queen's Bench.

John White, Plaintiff,
against
William Stephens, Defendant. } John Irving, Attorney for the Defendant, appears for him.

Entered the —— day of ——, 1846.

It was before observed, when alluding to the early state of litigation, that it might readily be conceived that the plaintiff, who was himself the promoter of the action, would cheerfully appear in court without requiring any compulsory process to enforce him; hence, in the present machinery of an action at law, the *plaintiff* is not required to enter an appearance. When then the plaintiff has issued and served his writ, and the defendant has appeared to it, both parties are considered in law as being *in court*, and may therefore be deemed ready to commence the legal conflict. At this stage of the action, the *pleadings* commence, which are not, as might reasonably enough be supposed, delivered *vivâ voce* in open court, as was originally the case, but, like the appearance, are of an artificial character, consisting of prescribed forms drawn up on paper and delivered between the litigating parties. It is hardly within the scope of this outline to

trace the gradual decay of the ancient formularies and the equally gradual development of those which characterize our present forensic proceedings: suffice it to say, that those writers who treat of our legal antiquities, fix the date at which oral pleading was abandoned, about the middle of the reign of Edward the Third, and hence we may infer, that about this period the present mode of delivering pleadings in the shape of written instruments was introduced. We must now return to the practice as it is. The plaintiff and defendant then we have left *in court* (i. e. *constructively*) ready to commence their altercation; this, as might naturally be supposed, commences with the plaintiff, who begins the pleadings by delivering to the opposite party his DECLARATION. This consists of a formal written statement of his cause of complaint, of which the following would be the form:

" In the Queen's Bench.

On the —— day of ——, in the year of our Lord 1846.

[London to wit.] John White, the plaintiff in this suit, by James Blackstone, his attorney, complains of William Stephens, the defendant in this suit, who has been summoned to answer the said John White in an action on promises. For that whereas the defendant heretofore, to wit, on the —— day of ——, in the year of our Lord 1846, was indebted to the plaintiff in 120*l.* for the price and value of goods then sold and delivered by the plaintiff to the defendant, at his request; and in 120*l.* for money found to be due from the defendant to the plaintiff on an account then stated between them. And thereupon the defendant afterwards, on the day and year aforesaid, in consideration of the premises respectively then promised the plaintiff to pay the said several sums respectively to the plaintiff on request; yet he has disregarded his promises, and has not paid any of the said monies, or any part thereof, to the plaintiff's damage of 120*l.* and thereupon he brings his suit, &c."

Before proceeding further it is as well to observe, that all the forms which are here introduced are made applicable to the particular action of which we are now giving a sketch; at the same time they possess the same general features which characterise the forms made use of in all actions at law. We will now endeavour to explain the various parts of a declaration as illustrated by the above form. It commences with the title of the court in which the action is brought; then comes the date, which is that on which the declaration is delivered to the opposite party; next comes the *venue*, which is that part in the above form inclosed in brackets, viz. " London to wit." The word *venue*, as at present understood in law proceedings, merely

signifies the county in which the action is intended to be tried. As it was, and still is to a certain extent, an important part of the declaration, it will be desirable to ascertain its meaning with some degree of precision, and with this view we must shortly trace its origin. Formerly the constitution of a jury was very different from what it is now; the individuals of which it was composed, instead of being indifferent persons, unacquainted with the facts of the case to be submitted to their decision, were usually persons who, from residing in the neighbourhood where the point in dispute arose, were personally cognizant of them, and in a manner were at the same time witnesses as well as jurors, and gave their verdict not as in the present day, from the evidence which was elicited from other witnesses, but from facts which they themselves previously knew. Hence at this period the jurors were summoned from the immediate neighbourhood wherein the facts arose, and it was therefore necessary, in order to give the defendant an opportunity of properly constructing his defence, and the sheriff the means of knowing from what neighbourhood to summon the jury, to show it in the pleadings. The place or neighbourhood was called the *venue*, or *visne*, and the alleging such place in the declaration was thence termed *laying the venue;* and until the alterations introduced by the Rule of Court, Hil. 4 W. 4, it was the practice to lay a venue to every material fact that occurred in the pleadings, as well as that which is still inserted in the margin of the declaration. When, however, jurors assumed the character which they at present maintain, viz. that of being judges of matters of fact elicited from *other* witnesses, there was no longer any occasion for summoning them from the immediate neighbourhood wherein the facts arose, because now their verdict was to be deduced not from what they previously knew themselves of the circumstances, but, as before observed, from facts attested by other witnesses. From the above circumstance the venue became comparatively of little importance, and now instead of *laying a venue* to each traversable or material fact that occurs in the pleadings, the name of a *county* is merely stated in the margin of the declaration, which is called the *venue in the action*, being the county in which the action is to be tried, and out of which the jurors are to be summoned. The next part of the declaration, which it may be as well to explain, is the *count*. The word count, from the French *conte*, a narrative, signifies an allegation of fact made in pleading, but as applied to a declaration, it signifies one of those sections in a declara-

tion which embodies some distinct ground of complaint. Thus, in the form of the declaration above given there are two counts, each containing an allegation that the defendant is indebted to the plaintiff in the sum of one hundred and twenty pounds. Having thus endeavoured to explain some of the most prominent parts in a declaration, we will now proceed with the action. The plaintiff then has *declared*, that is, he has delivered his declaration to the defendant; and it is now the part of the defendant to answer such declaration (or *plead* to it, as it is termed). This, however, he is not bound to do until the plaintiff has done three things, viz. given a *notice to plead*, entered a *rule to plead*, and made a *demand of plea*. The notice to plead, and the demand of plea, are usually indorsed on the declaration previously to delivering it, which render the trouble of a separate delivery of them unnecessary. The rule to plead is entered by taking a præcipe of it to the proper officer of the court, who enters it in a book kept for that purpose, and this must be done after the declaration is actually delivered. The following are forms of them:

Form of Notice to Plead.

The defendant is to plead hereto in four days, otherwise judgment.

Præcipe for a Rule to Plead.

In the Queen's Bench.

John White against *William Stephens.* } Rule to Plead.

JAMES BLACKSTONE,
Plaintiff's Attorney.
—— day of ——, 1846.

Form of a Demand of Plea.

The plaintiff demands a plea herein by

JAMES BLACKSTONE,
Plaintiff's Attorney.

The plaintiff having delivered his declaration together with the notice and demand of plea, and entered his rule to plead as explained above, now waits for the defendant's plea.

From the terms of the above notice and demand of plea it will be seen that the defendant has four days to plead; that is, he has the

space of four days to deliver his answer to the plaintiff's declaration. It may be as well to observe that in a country cause the defendant has eight days to plead, and in either a town or country cause the defendant can generally obtain an extension of his time by applying to a judge for that purpose. We will suppose, however, that the defendant is prepared with his defence, and that it simply consists of a denial of the causes of action alleged in the declaration. In such case it would be delivered in the following form:

In the Queen's Bench.

The —— day of —— in the year of our Lord 1846.

Stephens at the suit of *White.* } And the defendant by John Irving, his attorney, says that he did not promise in manner and form as the plaintiff has above complained against him, and of this the defendant puts himself upon the country, &c.

This, then, is the defendant's answer (or *plea*, as it is termed,) to the plaintiff's declaration; and on referring to the declaration itself, it will be observed that the plea is neither more nor less than a direct denial of the substance of the declaration. What does the plaintiff's declaration allege as the object of the suit?—recovery of damages for non-performance of a promise. What does the defendant's plea say in reference to that allegation?—it denies that the defendant ever made such a promise, and consequently impliedly denies the plaintiff's claim to any damages in respect thereof. Hence then we see the parties have arrived at something like a definite point; the plaintiff having made an allegation, which is met by the actual denial of the defendant. This plea, from its general character in denying, or in technical language *traversing*, the whole of the declaration, or the greater part of it, instead of only one portion or section of it, is called the *general issue* in this form of action; and when a defendant pleads a plea of this description, he is said "*to plead the general issue.*" When the defendant concludes his plea with the words "*and of this defendant puts himself upon the country, &c.*" it means that he submits the point in dispute to be tried by *a jury*: and a plea concluding in this form is said to "*conclude to the country;*" and the defendant in such case is said to *tender issue*. If the plaintiff accepts such tender, that is, if he also expresses himself willing to submit the point in issue to be tried by a jury, he signifies his intention either by delivering to

the opposite party a *replication* (that is, a *reply* to the plea,) called a *similiter* or *joinder in issue*; or else (as is the more usual practice) he adds the *similiter* to the defendant's plea, and delivers it with, and as a part of the *issue*. The following is a form of the *similiter* or *joinder in issue*, when delivered separately as a replication to the defendant's plea:

In the Queen's Bench.

The —— day of ——, in the year of our Lord 1846.

White against *Stephens*. } The plaintiff as to the plea of the said defendant above pleaded, and whereof he has put himself upon the country, doth the like.

This is called a *similiter*, because by it the plaintiff signifies his intention of doing the same, or *the like*, with the defendant; viz. of putting himself upon the country, or in other words, of submitting the disputed point to the decision of a jury.

As was observed before, however, the most usual manner in which the plaintiff signifies his intention of *accepting issue*, is not by delivering a similiter in the above form, but merely by annexing an abridgment of it to the end of the defendant's plea, and delivering it at the same time with and as part and parcel of the *issue*, of which we shall presently have occasion to speak.

The defendant, we have seen, has pleaded to the plaintiff's declaration, and at the same time has tendered issue. It now remains with the plaintiff to proceed, which he does either by delivering a *replication* to the defendant's plea, or else by *joining issue*. In this instance we will suppose the plaintiff to join issue; that is, to accept the *tender* made by the defendant at the end of his plea, by agreeing to submit the point in dispute to the decision of a jury. The plaintiff, as was before observed, signifies his intention of accepting issue by delivering to the defendant a set form of words, called a *similiter*, or *joinder in issue*, and it was also observed that it was the more usual course to deliver it at the same time with the issue, as part and parcel of the same. We will, therefore, now proceed to explain the nature of the *issue*.

The issue is a copy or transcript of all the pleadings that have been delivered between the litigating parties, from the declaration down to the joinder in issue. It is called the *issue* because it contains the

material point which has issued out of the mutual pleadings of the parties.

The word *issue*, however, is not only applied to the formal transcript of the pleadings, but is also used to signify the question of fact, or the specific point itself, which has arisen out of the pleadings, and which the parties have mutually agreed to submit to the decision of a jury. This, indeed, is the real and proper meaning of the word. Before giving a form of the issue, it may be observed, that when the plaintiff and defendant have arrived at this stage of the action, the *pleadings* are at an end, and the remaining steps that are taken are merely preparatory to the trial. For the only object of the pleadings is to bring the parties to issue; or, in other words, to ascertain the real point in dispute between them; and consequently, when this object is effected, their instrumentality is no longer required. We will now suppose the plaintiff to proceed, which he does by delivering to the defendant the issue, of which the following is a form.

In the Queen's Bench.

On the [*date of declaration*] day of ——, in the year of our Lord 1846.

[London to wit.] John White by James Blackstone, his attorney, complains of Williams Stephens, who has been summoned to answer the said John White, by virtue of a writ issued on the —— day of ——, in the year of our Lord 1846, out of the court of our Lady the Queen, before the Queen herself at Westminster. For that whereas the defendant heretofore, to wit, on the 20th day of November, in the year of our Lord 1846, was indebted to the plaintiff in 120*l.* for the price and value of goods before then sold and delivered by the plaintiff to the defendant, and at his request. And in 120*l.* for money found to be due from the defendant to the plaintiff, on an account then stated between them; and thereupon the defendant afterwards, on the day and year aforesaid, in consideration of the premises respectively, then promised the plaintiff to pay the said several sums respectively to the plaintiff on request. Yet he has disregarded his promises, and has not paid any of the said monies or any part thereof, to the plaintiff's damage of 100*l.*, and thereupon he brings his suit, &c.

PLEA.

The [*date of plea*] day of ——, in the year of our Lord 1846.

And the defendant, by John Irving his attorney, says that he did not promise in manner and form as the plaintiff has above complained against him, and of this the defendant puts himself upon the country, &c. *And the plaintiff doth the like.* Thereupon the sheriffs are commanded that they cause to come here on the —— day of ——, 1846, twelve, &c. by whom, &c. and who neither, &c. to recognise, &c. because as well, &c.

It will be seen from the above form that the issue is little more than a transcript of the pleadings, together with the addition of the *similiter* (which is that clause printed in italics), and the *award of the venire*, which consists of the whole of the concluding clause, commencing with the word "Thereupon."

Without enlarging further on the subject of the similiter, it may be observed, that the only reason for delivering it with the issue, instead of delivering it in a separate form, is to save trouble; as whether it were delivered separately or not, it *must* be delivered with the issue, because it forms a component part of it, and as it is not necessary to deliver it twice, the previous delivery of it is thus ordinarily rendered useless. The concluding part of the issue before alluded to is called the *award of the venire*, because it is the formal mandate of the court, by which it *awards* a writ called a *venire facias*, directed to the sheriff of the county wherein the *venue* is laid, commanding him to summon a jury to try the point in dispute, i. e. the *issue*. The words of the award in its unabbreviated form are as follow:—"Thereupon the sheriff is commanded that he cause to come here on the —— day of ——, ——, *twelve* good and lawful men of the body of his county, qualified according to law, *by whom* the truth of the matter may be better known, and *who are in nowise* of kin either to John White the plaintiff, or William Stephens the defendant, *to recognise* upon their oath the whole truth of the premises, *because as well* the said John White as the said William Stephens, between whom the matter in variance is, have put themselves upon that jury."

When the plaintiff has made this transcript of the pleadings, or, as it is termed, has *made up the issue*, he usually, previously to delivering it, indorses thereon a notice of trial, which informs the defendant when and where the trial is to take place. The following is a form of such notice when indorsed on the issue:—

Take notice of trial in this cause for the sittings in [*or* "for the first day of the sittings after," *or* "for the adjournment day of the sittings after," *as the case may be*] this present —— term, to be holden at the Guildhall of the city of London. Dated this —— of ——, 1846.

Yours, &c.
JAMES BLACKSTONE,
Plaintiff's Attorney.

Before we proceed to the next step, it will be desirable, in order to

explain the language of some parts of the issue, to revert for a moment to the ancient mode of procedure.

At a very early period of our history it was usual for the king to sit in his court in person; and hence all the acts of the court were commonly performed immediately under his own cognizance; and at the present day the king is frequently (by a fiction of law) supposed to be personally sitting in court, and to exercise his authority therein. Hence the meaning of the language at the commencement of the issue, which states the writ to have been issued "out of the court of our lady the queen, *before the queen herself, at Westminster.*"

The only other unintelligible part of the issue appears to be the *award of the venire*, which may be thus explained. When the pleadings in an action, instead of being delivered (as at present) in writing and out of court, were *vivâ voce* altercations delivered by the parties *in court*, entries of them were made on a parchment roll by the clerks who sat in court for that purpose, and when the parties arrived at issue the court awarded a writ called a *venire* to compel a jury *to come* to try such issue. All this was entered on the roll by the prothonotaries or entering clerks, but when the business of the courts increased it became impossible for the prothonotaries to enter all those proceedings on the rolls, and therefore the attorneys were permitted to deliver them in paper one to another. Hence the *award of the venire* is still supposed to be the act of the court, although it is entered on the paper copy of the issue by the attorney as a matter of course.

We will now proceed with the action. The plaintiff, we have seen, has delivered his issue and given notice of trial, and his next step is to issue out the *venire*, in pursuance of the award of the court to that effect, signified at the end of the issue. The *venire* is a writ which is issued out and directed to the sheriff of the county wherein the *venue* is laid, commanding him to send to Westminster a jury to try the matter in variance between the parties. It is obvious that in order to bring twelve jurors into court, some compulsory process is necessary. It cannot be supposed that men in no way allied either to the plaintiff or defendant would be willing to relinquish their own vocations, and to attend in court for the purpose of putting an end to the point in dispute between the parties. Hence then the *reasonableness* of a process of some kind in order to compel the attendance of jurors.

The *venire* was formerly the only writ required for returning a juror, but owing to an alteration in practice, which we shall shortly have

occasion to mention, another writ, called a *distringas*,* is now also used for this purpose.

Before proceeding to explain the nature of the *venire* and the *distringas*, and the manner in which they operate in compelling the attendance of jurors, we shall give a form of each, in order to illustrate what we are about to say respecting them.

Form of Venire facias Juratores in the Queen's Bench.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, defender of the faith, to the sheriffs of London greeting: We command you that you cause to come before us at Westminster on —— [*some particular day before the trial*] twelve good and lawful men of the body of your county, qualified according to law, by whom the truth of the matter may be the better known, and who are in nowise of kin either to John White, the plaintiff, or to William Stephens, the defendant, to make a certain jury of the country between the parties aforesaid in an action on promises [*or* "of debt," &c. *as the case may be*], because as well the said John White as the said William Stephens, between whom the matter in variance is, have put themselves upon that jury; and have there then the names of the jurors and this writ. Witness, Thomas Lord Denman, at Westminster, the —— day of ——, in the —— year of our reign.

Form of a Distringas Juratores.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, defender of the faith, to the sheriffs of London, greeting: We command you that you distrain the several persons named in the panel hereunto annexed [*or if it be a special jury, the form here is rather different*] jurors summoned in our court before us, between John White, plaintiff, and William Stephens, defendant, by all their chattels in your bailiwick, so that neither they nor any of them do lay hands on the same, until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that you have their bodies before us at Westminster, on ——, —— [*some particular day after the trial*], or before our right trusty and well beloved Thomas Lord Denman, our Chief Justice, assigned to hold pleas in our court before us, if he shall first come on ——, the —— day of —— [*the day of trial*], at the Guildhall of the city of London aforesaid [*or if in Middlesex* "at Westminster Hall, in the county of Middlesex aforesaid," *or if at the assizes* "before our justices assigned to take the assizes in your county, if they shall first come on —— [*the commission day of the assizes*], at —— [*the place where the assizes are held*], in your said county,"] according to the form of the statute in such case made and provided, to make a certain jury between the said parties in an action on promises [*or* "of debt" *as the case may be*], and to hear their judgment thereupon of many defaults; and have there then the names of the jurors and this writ. Witness, Thomas Lord Denman, at Westminster, the —— day of ——, in the —— year of our reign.

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* In the Common Pleas the *distringas* is not used, but a writ similar in its nature and effect, called a *Habeas Corpora Juratorum*.

The above two writs, on account of their being the *process* which compel the attendance of *jurors*, are commonly denominated the *jury process*, and we shall now endeavour to explain their meaning, and the manner in which they operate; and, in order to do this, we must again revert to the ancient mode of procedure in our courts.

Formerly causes of almost every description were tried in the *curia regis*, or Court of King's Bench, at Westminster, but the inconveniences arising from this were numerous, and hence we find, at a very early period, that our judges were commissioned by the king to make circuits through various parts of the kingdom, in order to hear and determine such causes or matters as occasion required. Such was the commission of *gaol delivery*, which used to be issued occasionally, empowering certain justices named in the commission to make a *delivery of the gaol* specified in the commission; that is, to inquire into the offences of all the prisoners in such gaol, and to deal with them according to their respective merits. Such also was the *commission of assize*, which in the reign of Henry the Third empowered certain judges to go circuits once every year to take *assizes*, that is, to take and determine such causes as related to seisin of land. Such was the practice until the reign of Edward the First, when the statute of *nisi prius* was passed, by which the justices of assize were empowered to try various other matters not immediately relating to land, in order to prevent the great expense which suitors were at in bringing up witnesses from distant parts of the country to Westminster Hall. From this time the judges were commissioned to go circuits twice in every year, viz. in the vacations before Easter and Michaelmas terms, in order to dispose of such causes as were ready for trial.

At this period the *venire* was the only writ used for summoning a jury, and by the aforesaid statute a clause of *nisi prius* (so called because the clause commences with those words) was directed to be inserted in the writs of *venire facias*, thus: "that the sheriff should cause the jurors to come to Westminster on such a day in Easter or Michaelmas terms, *nisi prius*, that is to say, *unless before* that day the justices assigned to take the assizes should come into his said county." By virtue of this *nisi prius* clause, the sheriff sent the jurors to the court of assize, which would be held in some town or city within his county, instead of sending them to Westminster; because he was commanded to send them to Westminster only in the event of their not coming into his county before such day in Easter or Michaelmas term, and they

were sure to do this in order to take the assizes, which were always held in the vacations *before* Easter and Michaelmas terms.

The reader may naturally ask *why* the *nisi prius* clause was inserted in the venire at all; or, in other words, why the court commands the sheriff to return the jurors to Westminster, unless before that day the justices should come into his county, when it is known at the time the command is given that the justices *will* come into his county. From the wording of the *venire* it is evident that the court gave the sheriff room to infer that there was some probability of the justices not coming into his county to take the assizes at the appointed period; but this probability, so far as we are enabled to judge from the experience of the past, was extremely remote. We cannot therefore give any rational explanation why the *nisi prius* clause was introduced into the *venire*, nor why it should still be introduced into the *distringas juratores*.

There was one inconvenience which arose from the *nisi prius* clause being inserted in the *venire*, *viz.*, that, as the sheriff made no return of the jury to the court at Westminster, and in no way gave the suitors an opportunity of knowing who the persons were that were to form the jury, until the trial was just about to come on, they were not prepared with their challenges or exceptions, which they were entitled to make against any of the jurors whom they had reason to suspect of partiality or incompetency, &c. In order to obviate this, the stat. 42 Edw. 3, c. 11, was passed, by which it was enacted, that no trials at *nisi prius* should be taken until *after* the sheriff had returned the names of the jurors to the court at Westminster; thus giving the suitors an opportunity of ascertaining beforehand who the persons were who were to constitute the jury. From this period the *nisi prius* clause was left out of the writ of *venire facias*, and inserted in another writ, called a *distringas*, which was introduced about this time, and which the framers of the statute seem to have deemed necessary in order to compel the attendance of jurors.

As the practice which this statute introduced has remained unaltered to the present day, we will now endeavour to show how these two writs operate in compelling the attendance of jurors.

A *venire facias*, without any *nisi prius* clause, is directed to the sheriff of the county wherein the cause is to be tried,* commanding him to send forthwith (or at some particular specified day *before* the

* See the form of this *venire* as introduced, *ante*, p. 454.

trial) to Westminster twelve jurors, to make a jury between the parties: by virtue of which command the sheriff returns the names of the jurors on a *panel* (i. e. a small oblong piece of parchment), but the jurors themselves the sheriff does not summon, and consequently they do not appear at the specified day, but make default, whereupon another writ is directed to the sheriff, called (in the Queen's Bench) a *distringas*,* commanding him to have the bodies of the jurors in court at a specified day (usually at some day *after* the trial) *unless* the justices of assize shall first come, &c. (here comes the *nisi prius* clause), or to *distrain* them by all their goods and chattels, &c. In pursuance of this writ, the sheriff returns the jury to the assizes, which he knows will be held before the return of the distringas, i. e. before the day on which he is commanded to have the bodies of the jurors at Westminster.

As the jury process is generally considered one of the most unintelligible parts of the machinery of an action at law, and as it is particularly important that it should be clearly understood, we will endeavour further to illustrate it.

Supposing, on the 10th of June, 1845, a plaintiff in a country cause, say, for example, a cause arising in the county of Buckingham, is ready to proceed to trial at the summer assizes of the same year, which would be held at the town of Buckingham about the 20th of July, that is, in the vacation preceding Michaelmas term: in such case the jury process would be managed thus.

The plaintiff would issue out a *venire facias* tested (i. e. witnessed) on the day on which it was issued, say the 10th of June, 1845. This writ would be directed to the sheriff, commanding him to *cause to come* to Westminster on the 11th, twelve jurors to make a jury between the parties, &c. The sheriff (according to the practice) would not summon the jurors, and consequently they would not come to Westminster on the 11th, but would make default; in the meanwhile, however, the sheriff returns the names of the jurors (who by a legal fiction are *supposed* to have been summoned) on the panel before mentioned. The jurors, as was observed before, are supposed to have been actually summoned by virtue of the *venire*, and to have either purposely or through negligence disregarded the summons, and made default. On this supposition the writ of *distringas* is grounded, which, in the

* See the form of this writ as introduced, *ante*, p. 454.

example we are now giving, would, in consequence of the jurors' default, be issued out and *tested* on the day they made such default, that is, on the 11th, being the return day of the *venire*. This writ, in conformity with the supposition before alluded to, would command the sheriff to *distrain* the goods of the jurors already returned on the venire (i. e. in the *panel*), so that they might be compelled to attend in court at Westminster on the 2nd of November, (then would come the *nisi prius* clause,) *unless before* that time the justices assigned to take the assizes should come into his (the sheriff's) county. Now, it was said before, that the justices would hold the assizes at Buckingham about the 20th July, consequently the sheriff neither distrains the jurors, nor sends them to Westminster on the 2nd of November; because he was to do this *only in the event of the justices not coming into his county before that time*, which we see they would do; and hence the sheriff would send the jurors to Buckingham, where they would attend the court, and try the cause.

From what has been said on the subject of the *venire* and *distringas*, it is to be hoped that the reader will now understand the meaning of a trial at *nisi prius*.

Before proceeding to the next step in the action, it will be as well in this place to say a few words on the subject of trials at the *assizes*, and trials at *nisi prius*, in order to explain the distinction between the two; and for this purpose we must shortly recapitulate what has been said in a former page.

At a very early period of our legal history actions could only be tried in the court where they were brought, and as the greater number of actions were brought in the *Curia Regis*, (i. e. what is now called the Queen's Bench at Westminster,) and the Exchequer, the judges of those courts soon found themselves overburdened with business. In order to relieve themselves from this increasing pressure, and in order also to relieve suitors from the heavy expenses which they incurred, by being obliged to come to the courts at Westminster from the most distant parts of the country, it was judged necessary to establish some other tribunal of a similar nature. Accordingly we find that justices were appointed to make *circuits* through the kingdom, and by virtue of the king's *commission* were empowered, during these circuits, to dispose of various causes which otherwise would have been tried at Westminster. The causes which these *itinerant* justices tried in the different counties through which they passed were of various kinds;

but the most important, and apparently the most numerous, were those called *assizes of novel disseisin, and mort d'ancestor*. From the circumstance of these said *assizes* being the most numerous and important class of causes tried on the circuits, the justices who performed these circuits were called *justices of assize*, the tribunals themselves *courts of assize*, and the county towns where these tribunals were periodically held, *assize towns*.

Such was the constitution of this species of provincial courts, until the important statute of 13 Edw. 1, c. 30,* introduced various alterations, which we shall now endeavour to trace.

At the period when this statute was passed, the causes which the justices were empowered to try on their circuits were of a limited nature, being principally such as related to the *seisin* (i. e. possession) of land, and other important questions of a local nature. But, by this statute, the justices were empowered to try matters of less importance, and, instead of performing their circuits only once a year, they now, in order to discharge their additional business, performed them twice, viz. in the respective vacations before Easter and Michaelmas terms.

We may easily imagine, that when the justices were thus empowered to try ordinary actions on their circuits, the bulk of their business greatly increased, and that the *assizes of novel disseisin* and *mort d'ancestor* then formed a comparatively small portion of it. Still, however, these provincial tribunals continued to be called *courts of assize*, the judges *justices of assize*, and the towns in which they were held *assize towns*.

As the constitution of the courts of assize, after the passing of the statute of *nisi prius*, was much the same as at the present day, we shall endeavour to explain their nature and character as now constituted, in order to show the distinction between the words *assize* and *nisi prius* as applied to trials.

England is divided into eight *circuits* or divisions, each comprehending several counties; and these circuits are called, in reference to their geographical position, the Home, Midland, Oxford, Norfolk, North Wales, South Wales, Western and Northern circuits. Twice in the year, *viz.* in the vacations preceding Easter and Michaelmas

* It was through the operation of this statute that the *nisi prius* clause was introduced into the *venire facias*, and it is thence commonly called the *Statute of nisi prius*.

terms, the judges (two of whom are usually appointed to each circuit) visit the different counties and dispose of such causes as are ready for trial.

London* and Middlesex, however, are not included in any one of these circuits; for the proximity of these counties to the courts at Westminster enables the judges to visit them at any time as occasion may require. Besides, on account of their immense population and the proportionate quantity of litigation which thence arises, these counties would require the attendance of the judges much more frequently than the others. Accordingly there are certain fixed days (*both in term and vacation*) on which the judges sit in these counties to dispose of those causes which are ripe for trial.

These sittings of the judges are held respectively in Guildhall and in Westminster Hall, and are called *sittings at nisi prius*, and the trials there had are called *trials at nisi prius*, for the reasons we have stated in a former page.

The principal difference between the *sittings at nisi prius* and the *assizes* is, that the business transacted at the former is merely of a civil nature, while that transacted at the latter is both of a civil and criminal character. The reason of this difference is, that the judges of *nisi prius* sit merely by virtue of one commission, *viz.* the *commission of nisi prius*, whilst the justices of *assize* sit by virtue of no less than five different commissions, viz. 1. A commission of the *peace*. 2. A commission of *oyer and terminer*. 3. A commission of general *gaol delivery*. 4. A commission of *assize*. 5. A commission of *nisi prius*. Hence we see that the justices of assize are empowered by these commissions to try *not only* nisi prius causes, but also almost every other species of cause, whether civil or criminal. The reader will now probably be enabled to understand why the language of the *distringas* is not the same when it is issued to summon a jury from Middlesex or London, and when issued to summon a jury from the other counties. Thus when issued to summon a jury from London or Middlesex, it commands the sheriffs to have the bodies of the jurors at Westminster, or before the chief justice *assigned to hold pleas*, &c., if he shall first come, &c. But when issued to summon a jury from any other county, it commands the sheriff to have the bodies of the jurors at Westminster, or before the justices *assigned to take the assizes*, if they shall first come,

* London is here spoken of as a county of itself distinct from Middlesex.

&c. The reason of this difference is obvious, when we remember that the *nisi prius* judge is not commissioned at all to take *assizes*, but merely sits by virtue of his *commission of nisi prius*. Before we dismiss this subject, it may be as well to observe that the day on which the justices of assize open their commission is called the *commission day of the assizes*.

Having thus endeavoured to explain the meaning of the words *assize* and *nisi prius*, we shall now resume the proceedings in the action.

We have seen that the plaintiff has made up and delivered the issue, given notice of trial, and issued his jury process. His next step is to enter the proceedings on record. This he does by making a transcript of the proceedings on a parchment roll in the following form:—

In the Queen's Bench.

The —— day of ——, in the year of our Lord ——, [*the date which is here inserted is that of the declaration.*]

[London to wit.] John White, by James Blackstone, his attorney, complains of William Stephens, who has been summoned to answer the plaintiff, by virtue of a writ issued on the —— day of ——, in the year of our Lord ——, out of the court of our Lady the Queen, before the Queen herself at Westminster [*here is inserted the declaration and plea as ante, p.* 451]. And the said plaintiff does the like. Thereupon the sheriffs are commanded that they cause to come here on the —— day of ——, twelve, &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

Afterwards, on the —— day of ——, in the year of our Lord ——, [*the date of the teste of the distringas*] the jury between the parties aforesaid is respited here until the —— day of ——, [*the date on which the distringas is returnable*] unless [*the judge or judges of nisi prius and assize*] shall first come on the —— day of ——, [*the first day of the sittings at nisi prius, or the commission day of the assizes, as the case may be*] at ——, according to the form of the statute in such case made and provided, for default of the jurors, because none of them did appear; therefore, let the sheriff have the bodies of the said jurors accordingly.

When he has thus entered the proceedings on the record, it is taken to one of the public offices of the courts and sealed and *passed*, as it is termed, and this is then termed the *nisi prius record*, from the circumstance of its containing the clause before alluded to. It will be perceived on referring to the above form, after having filled up the omitted matter as directed by the instructions given in italics, that the nisi prius record contains a regular historical summary of the suit, from the issuing of the writ of summons down to the time when the

parties have arrived at issue, and have agreed to put themselves upon the country; or, in other words, have agreed to submit the point in dispute to the decision of a jury. The remarks which have been made at a former page respecting the origin and meaning of the nisi prius clause as it occurs in the *distringas* is equally applicable to the *nisi prius record*, and therefore we shall not enlarge upon it here. One of the most important uses of this record is to supply the judge who tries the cause with such information as is necessary for his guidance, and for this purpose it is always taken to the sittings or to the assize town, at whichever the trial takes place.

It may also be observed that this record is a sort of commission or warrant for the judge to try the cause. In the action of which we have been giving an outline, the trial would come on at the nisi prius sittings at Guildhall, on account of its being a London cause; and accordingly the nisi prius record would be carried down to that court.

The next step the plaintiff would take, provided he had determined on bringing the cause into court, would be that of entering it for trial, in order that it may come on in its proper turn. This the plaintiff does by taking the record, with the distringas and the panel annexed, to the judges' marshal, where it is entered in a book kept for that purpose.

The parties now get ready for trial, which they do by preparing their briefs and evidence. A *brief* consists of an abstract of the pleadings which have been delivered between the parties, a concise history of the circumstances which gave rise to the action, and a statement of the facts which can be proved by the different witnesses who are to give their evidence on trial, together with the names of the witnesses themselves who can attest to such facts. These three departments of the brief are respectively called *the pleadings*, *the case*, and *the proofs*. After the parties have prepared their briefs, they deliver them to the counsel whom they intend to employ on the trial; and it may be as well to observe that the usual mode is to retain two counsel, a junior and a senior.

The parties now *subpœna* their witnesses in order to compel them to attend in court to give their evidence on the trial of the cause. The mode of doing this is by issuing out writs of subpœna, making copies of them, and delivering such copies to the persons whose evidence you require, together with a tender of their necessary expenses.

The following is a form of the subpœna.

Subpœna ad Testificandum.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith. To —— [*names of the witnesses*] greeting: We command you, that, laying aside all and singular business and excuses, you, and every of you, be and appear in your proper persons before our right trusty and well beloved Thomas Lord Denman, our Chief Justice assigned to hold pleas in our Court before us, at the Guildhall of the city of London, on the —— day of —— instant, [*or* "next,"] by —— of the clock of the forenoon of the same day, to testify all and singular those things which you, or either of you, know in a certain cause now depending in our Court before us at Westminster, between John White, plaintiff, and William Stephens, defendant, in an action on promises, on the part of the plaintiff, [*or* "defendant," *as the case may be*] and on that day to be tried by a jury of the country; and this you, or any of you, shall by no means omit, under the penalty upon each of you of £100. Witness, Thomas Lord Denman, at Westminster, the —— day of ——, in the —— year of our reign.

This would be the form of the subpœna issued out where the action was brought in the Queen's Bench, and was to be tried at the *nisi prius* sittings at Guildhall. Had the action been brought in another court, or had it been the intention of the parties to try it at the assizes, the form would slightly vary from the above.

When it is necessary not only to have *oral* evidence, but also *documentary*, then a subpœna, called a *subpœna duces tecum*, is issued, framed partly as the one given above, but with some additional clauses containing a statement of the documents the witness is required to bring with him; and a copy of this is served as in the case of an ordinary subpœna.

We will now suppose that the day on which the trial is to take place has arrived; that the sheriff has returned the jurors to Guildhall; and that the witnesses, counsel, and attorneys are all in court ready to fulfil their respective offices. But the reader may perhaps inquire, how are the parties to know the exact day when the trial will take place?

This we will endeavour to explain. It was before stated that the cause was entered for trial in the book of a public officer called the judge's marshal. When the sittings commence, about thirty or forty of these causes are daily taken out of the book by rotation, entered on a slip of paper, and affixed on the outside of the court: and such list is intended as notice to the parties who may have causes therein, that such causes are (if time permit) to be tried during that day.

They are usually entered on the list in the order in which they are taken from the marshal's book; thus—

James Blackstone, 20, White *v.* Stephens, John Irving.

It will be observed that first of all comes the name of the plaintiff's attorney; then the number of the cause as it stood in the marshal's book; then the name of the cause; and lastly the name of the defendant's attorney.

We will now suppose that our cause has been duly entered on the list; and that it is called on for trial; and that all the parties are in readiness, that is, the attorneys for the plaintiff and defendant, the counsel on both sides, and the witnesses. The first thing to be done when the cause is called on, is for the record to be handed to the judge, in order to inform him of the nature of the cause to be tried. The next step is to impanel and swear the jury, which is done in the following manner. The name, condition, and place of abode of each person summoned and impaneled to serve on the jury are written on a separate piece of card or parchment, and put into a box provided for that purpose, out of which the *associate* draws twelve of these pieces of parchment or card, and if any of the jurors whose names are so drawn do not appear when called, or are not allowed to sit upon the jury on account of being *challenged*,* then the associate draws other names until the number required (*viz.* twelve) shall have been procured. These twelve persons are then sworn, their names marked on the panel, and form the jury to try the cause. It may be as well to remark, that the *same* jury frequently tries a number of causes; and in such case the associate does not on the trial of each cause go through the same tedious process; but the jurors, if not objected to, are merely re-sworn without being re-drawn at all.

When the jury has been sworn as described above, the junior counsel for the plaintiff opens the pleadings; that is, he concisely states the substance of them to the jury, together with the points upon which issue has been joined; after which, if the *onus probandi*, or proof of the issue, lay with the plaintiff, (as would be the case in the action which forms the subject of this outline,) the senior or leading

* For an explanation of this word the reader is referred to title *Challenge*, in the Dictionary.

counsel then states the facts and circumstances of the case to the jury, together with the substance of the evidence he means to adduce, and its effect in proving the case. The plaintiff's counsel, after having thus opened the pleadings and addressed the jury, proceed to call and examine their witnesses in due order, each counsel examining a witness in the order of his precedence. When the plaintiff's counsel has finished examining his witness, the counsel of the opposite party is then entitled to cross-examine him, and thus they proceed until all the plaintiff's witnesses have been examined and cross-examined.

When the plaintiff* has thus gone through his evidence, and examined all his witnesses, his case is closed; and it is then for the senior counsel of the opposite party to state his case to the jury, and to call and examine his witnesses (if he has any), and to allow them to be cross-examined exactly in the same manner as above described. It is now the place for the plaintiff's senior counsel, who addressed the jury in the first instance, to reply (that is, if the defendant's counsel had called any witnesses of his own in support of his case; for if he had called no witnesses of his own, then the plaintiff's counsel is not entitled to reply); after which the case both of the plaintiff and defendant is considered as closed. The judge now *sums up the evidence*, that is, he informs the jury of the matters really in dispute between the parties—recapitulates to them the evidence which has been produced upon the trial—and makes such directory observations to them as are necessary for their guidance in the forming of their verdict.

After the judge has thus summed up, the jury deliberate between themselves upon the *verdict* they ought to give, and either deliver it at once, without leaving the jury-box; or, if the case is a difficult one, and there is any difference of opinion among them which cannot be immediately reconciled, they retire into a room provided for them, and there remain until they have determined on their verdict. When they have so determined and returned into court, the foreman of the jury, in the presence of the other jurors, delivers his verdict accordingly. The verdict is either *general* or *special*. General, when the jury give their verdict in general terms either "for the plaintiff" or

* We have supposed, for the sake of illustration, that the *plaintiff* was the party who opened the cause, and supported the affirmative of the issue, although in many cases the defendant is the party who does this.

"for the defendant;" stating at the same time (when the verdict is for the plaintiff, and the object of the action is *damages*) the *amount* of damages which they find.

A verdict is called special, when the jury, instead of simply finding the negative or affirmative of the issue, as they do in a general verdict, find *all the facts of the case as proved by the evidence*, and request the advice of the court thereon, in the following language: "that they are ignorant in point of law on which side they ought, upon these facts, to find the issue; that if, upon the whole matter, the court shall be of opinion that the issue is proved for the plaintiff, they find for the plaintiff accordingly, and assess the damages at such a sum, &c.; but if the court are of an opposite opinion, then *vice versâ*." When the form of the special verdict is settled, it is entered on record, and the question of law arising out of the facts so found, is argued and decided by the court in bank.

The verdict is afterwards drawn up in due form, and entered on the back of the nisi prius record, and such entry is called the *postea*, from the word ("afterwards") with which it begins. This *postea* is made out by the attorney of the successful party from minutes of the verdict which the judges' associate made on the back of the panel at the trial at *nisi prius*. It purports to be the return of the judge, before whom the cause was tried, of what was done at the sittings (or at the assizes, as the case may be) in reference to such record, and is the proper instructions for entering up judgment. The following is a form of the *postea* as adapted to the particular action which forms the subject of this outline.

Form of Postea.

"Afterwards, that is to say, on the day and at the place within contained, before the Right Honorable Thomas Lord Denman, the Chief Justice within mentioned, —— ——, Esquire,* being *associated* to the said Chief Justice, according to the form of the statute in such case made and provided, come as well the within-named plaintiff as the within-named defendant, by their

* This blank is intended for the name of the judges' associate. This officer appears to have been introduced by the statute of *nisi prius*, which enacts "that from henceforth two justices sworn shall be assigned, before whom and none other, assizes of *novel disseisin*, &c. shall be taken; and they shall associate unto themselves one or two of the discreetest knights of the shire into which they shall come and shall take the said *assizes*, &c." Now, however, the associate is not strictly speaking a *discreet knight*, but is usually some gentleman of the legal profession.

respective attorneys within mentioned; and the jurors of the jury, whereof mention is within made, being summoned, also come; who, to speak the truth of the matters within contained, being chosen, tried, and sworn, say upon their oath that the defendant did promise in manner and form as the plaintiff hath within complained against him, and they assess the damages of the plaintiff, on occasion of the not performing the promise within mentioned, over and above his costs and charges, by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings. Therefore, &c."

The verdict having been given, and the *postea* entered on the back of the record as above described, the next step is the *judgment*.

The judgment is the sentence of the law pronounced by the court upon the matter contained in the record, and varies in form according to the nature of the action; in the action we are now treating of (i. e. the action of *assumpsit*), in case the verdict were given for the plaintiff, the form of the judgment would simply be, that the plaintiff do recover his damages and costs.

The judgment, like the pleadings, was formerly actually pronounced by the judge in open court, and even now it is *supposed* to be so, although in fact such is not the case. According to our present practice, however, when the plaintiff or defendant is entitled to judgment, the fact of his being so entitled, instead of being openly pronounced so by the judge in court, is acknowledged or signified to be so by the mere signature of one of the officers of the court, expressive of the fact that judgment is given in his favour. This is what is denominated *signing judgment*, being simply substituted for the former mode of oral delivery of judgment by the judge.

The next proceeding is the *entry of judgment on record*. This is done by entering all the proceedings up to the judgment inclusive on a parchment roll, thence called the *judgment roll*. This also is *supposed* to be the act of the court, although in fact it is performed by the attorney of the successful party, and by him it is afterwards carried to the proper officer, who deposits it in the treasury of the court for safe custody. It may be as well to observe, however, that this entry of the proceedings on the judgment roll is in practice commonly omitted, excepting in particular cases, where it is *essential* that it should be done. The following is a form of the entry of judgment.

Entry of Judgment.

[*First of all, copy the issue to the end of the award of the* venire (which see p. 451, ante) *and then proceed as follows*].

Afterwards the jury between the parties is respited until the —— day of

——, [*the return day of the* distringas] unless —— shall first come on the —— day of ——, [*day of sitting at* nisi prius] at Guildhall, according to the form of the statute in that case made and provided, for default of the jurors, because none of them did appear. Afterwards on the —— day of ——, [*day of signing judgment*] came the parties aforesaid by their respective attorneys aforesaid, and the said ——, before whom the issue was tried, hath sent hither his record had before him in these words [*here insert the* postea *as given at p.* 466]. Therefore it is considered that the said plaintiff do recover against the said defendant his said damages, costs, and charges by the jurors aforesaid in form aforesaid assessed; and also £—— for his costs and charges by the court here adjudged of increase to the said plaintiff, with his assent; which said damages, costs, and charges in the whole amount to £——. And the said defendant in mercy, &c.

The party who prevails in an action is usually entitled not only to the principal object which he sought, but also to have all the expenses (technically called *costs*) which he has incurred in the action, paid him by the other party. Before, however, he can demand the payment of such *costs*, he must submit his *bill of costs* to be examined (or *taxed* as it is termed) by an officer of the court appointed for that purpose. The process of taxing costs is usually performed at the same time judgment is signed; a bill of such costs being previously delivered to the opposite party together with an *appointment to tax;* i. e. a time fixed by the taxing officer for the parties to attend before him for the purpose of such taxation. They accordingly attend the officer at the specified time, who examines or taxes the bill of costs, and disallows such items as he thinks proper; after which he deducts the amount of such disallowed items, and the remaining sum which he certifies as the proper amount to be allowed, and which is termed the *allocatur*, is included in the judgment, and is paid to the successful party together with the damages recovered; or if not paid may be recovered by virtue of a writ of execution.

Execution is the final step in the ordinary proceedings of an action at law, and is intended to enforce or carry into effect the sentence of the law, when the defeated party will not otherwise obey it. This is effected by issuing out a writ of execution, adapted to the nature of the case, addressed to the sheriff of the county wherein the defendant resides, commanding him to levy for the plaintiff the damages and costs recovered against the defendant, or to do such other acts as the nature of the case demands, and the law permits.

Such then are the *ordinary* proceedings in an action at law, brought to recover damages for the non-performance of a promise. To have

endeavoured to explain the nature of the numerous interlocutory proceedings which occur in an action would not only have obliged us to exceed the limits which we had prescribed to ourselves on commencing the outline, but would in all probability have only bewildered the reader, instead of giving him a clear idea of the general nature of an action. The object of the foregoing outline has been simply to convey to the reader's mind a general but definite idea of the ordinary steps in an action, and at the same time to explain to him the meaning of the words, phrases, and formularies, which, when unexplained, render these proceedings so difficult to be understood.

OUTLINE

OF

A SUIT IN EQUITY.

A *suit*, in its most comprehensive sense, is defined to be the form of application to the judicial power of the state for the redress of injuries alleged to be sustained.

The *manner* in which suits are prosecuted, or in other words the *formularies* that are made use of in suits in order to effect the objects they have in view, vary more or less in different countries, and in different courts; but the leading features of suits are the same in all countries and in all courts. Thus in all suits it is necessary that the party complained of should be compelled to appear in court, in order to answer the allegations of the complaining party; and hence arises the necessity of some compulsory means to secure his attendance in court, and this is effected by what is generally denominated *process*. So, in all suits where there are parties complaining, and parties complained against, or, in other words, where there are plaintiffs and defendants, it is obvious there must be allegations on one side, and answers to those allegations on the other; hence arise what are denominated the *pleadings*, which are neither more nor less than these allegations and answers framed in recognized forms, and through whose instrumentality the real point in dispute between the parties is ultimately elicited. Lastly, in all suits there must be a *mode of determining* the point between the parties—evidence adduced—the judgment of the court—and effective means of enforcing the judgment:—hence arise the *trial*, *the proofs*, the *judgment*, and *execution*.

Having shown what are the leading characteristics of suits in general, it will now be our task to give a sketch of the various proceedings in a suit in chancery, from its commencement to its termination.

BILL.

The first step in commencing a suit in chancery is to *file a bill.* A bill is a petition in writing addressed to the Lord Chancellor, or other person or persons who for the time being have the custody of the great seal, wherein the petitioner sets forth the subject of complaint, and adds such circumstances by way of allegation, (which are technically called "*charges,*") as tend to corroborate his statement, or to anticipate and controvert the claims of his adversary, and finally he prays such relief, as the nature of his case demands, and also process of subpœna against the defendant to compel him to answer upon oath to all the matters charged against him in the bill. A bill, the form of which is derived from the civil law, is commonly described as consisting of nine parts. The *first* part contains the address of the bill to the Lord Chancellor, or other person or persons who have the custody of the great seal. The *second* part contains the names and descriptions of the plaintiffs. The *third* part is termed the *stating* part of the bill, which consists of the plaintiff's case, or in other words, the facts upon which he rests his title to relief. The *fourth* part consists of a general charge of confederacy against the defendant. The *fifth* part consists of allegations of the defendant's pretences and what are called *charges* in corroboration of them. The *sixth* part consists of an averment that the acts of the defendant complained of are contrary to equity, and that his only complete remedy is through the mediation of a court of equity. The *seventh* part consists of interrogations, and a prayer that the defendants may answer the matters alleged against them in the bill. The *eighth* part contains the prayer for relief. The *ninth* part consists of a prayer of process, that is, that a writ of subpœna may issue against the defendant to compel him to answer upon oath to all the matters charged against him in the bill.

When a party is desirous of filing such a bill, he communicates the facts of his case to his solicitor, who then prepares instructions, and these are laid before counsel for the purpose of enabling him to draw the bill. Bills and other pleadings in chancery are usually drawn by junior counsel, who, from the circumstance of their devoting a great portion of their time to drawing draft pleadings in equity, are denominated *equity draftsmen.* When counsel has drawn the draft of the bill and signed it, (for no bill can be put on the file of the court without being previously signed by counsel,) the solicitor, after comparing

it with the instructions he had received from the plaintiff, in order to see that it is conformable with them, gets it engrossed on parchment and files it at the record and writ clerks office, from which time it is said to be a record of the court, and bears date from the day on which it is brought into the office.

The bill having been filed, the next step for the plaintiff's solicitor is to sue out a writ of *subpœna*, commonly called, in order to distinguish it from other writs of the same name, a *subpœna to appear and answer*. This is a mandatory writ or process issuing out of and under the seal of the court, directed to the defendant, commanding him to appear and answer the bill—(*sub pœna centum librarum*).

The following is a form of such subpœna:—

Subpœna to appear and answer.

Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, To —— [*the name of the defendant or defendants*] greeting: We command you, ["and every one of you," *if more than one defendant*] that within "eight days" after the service of this writ on you, exclusive of the day of such service, laying all other matters and excuses aside, you do cause an appearance to be entered for you in our High Court of Chancery to a bill filed against you by ——, [*name of the plaintiff*, "and another," *or* "others," *if more plaintiffs than one*] and that you do answer concerning such things as shall then and there be alleged against you and observe what our said court shall direct in this behalf, upon pain of our attachment issuing against your person, and such other process for contempt as the court shall award. Witness ourself at Westminster, the —— day of ——, in the —— year of our reign.

DEVON.

Memorandum to be subscribed at Foot of Subpœna.

Appearances are to be entered at the Record and Writ Clerk's Office, in Chancery Lane, London, and if you do not cause your appearance to be entered within the time limited by the above writ, the plaintiff will be at liberty to enter an appearance for you at your expense, and you will be subject to an attachment against your person, and such other process as the court shall award, and to such order or decree being made against you as the court shall think just upon the plaintiff's own showing.

A copy of this subpœna is made and delivered to (or *served on*, as it is termed) the defendant, who on such *service* is obliged to appear within eight days. If the defendant refuses or neglects to do so, he is said to be in *contempt*, and the plaintiff may sue out certain process against him, thence called *process of contempt*, or adopt any of the proceedings mentioned in the notice at the foot of the subpœna.

Before, however, this process can be issued against a defendant, the

plaintiff's solicitor must procure an affidavit of the service of the subpœna from the person who served the defendant, which is then left with the record clerk, who then forthwith seals what is termed an *attachment* against the defendant, or enters an appearance at the option of the plaintiff.

The issuing of the attachment is the first step in the process of contempt; it is a kind of writ, directed to the sheriff or other ministerial officer of the county wherein the defendant resides, commanding him to attach or take up the defendant, in order that he may have him before the court on a day therein specified, to answer for his contempt in not appearing to the subpœna. If the sheriff cannot find the defendant he then returns *non est inventus*, whereupon another attachment issues, called an *attachment with proclamations*, which commands the sheriff to have proclamations made in the county, summoning the defendant upon his allegiance to appear and answer according to the previous command of the court as signified to him by the subpœna. If the defendant still remains in contempt, and the sheriff again returns *non est inventus*, then a commission is awarded against him termed a *commission of rebellion*, directed to four or more commissioners, named by the plaintiff or his solicitor, who are directed to attach him wheresoever he may be found. If to this commission of rebellion a *non est inventus* is also returned, then the court sends an officer, termed a serjeant at arms, in quest of the defendant, whom, if he finds, he brings to the bar of the court to answer for his contempt; but if he does not find him, he also makes a return of *non est inventus*, whereupon a *sequestration* issues, which is a commission directed to certain commissioners therein named, empowering them to seize his goods and chattels and to receive the profits of his real estate, and to keep the same in their hands until the defendant appears, and answers the bill filed against him, and otherwise clears his contempt.*

Such is the mode which may be adopted by the Court of Chancery in order to enforce obedience to its commands. Recent alterations in the practice of the court will, however, rarely render it necessary for a plaintiff to resort to all these proceedings to enforce appearance.

APPEARANCE.

We will now suppose that the defendant, either *voluntarily* or by

* The proceedings for contempt are now regulated by the general orders of the court of the 8 May, 1845.

means of the process above described, *appears*. His appearance is effected by his solicitor filing the same with the record and writ clerks.

The defendant now bespeaks an office copy of the bill and prepares his defence. Before proceeding further it will be proper to remind the reader that whenever we represent the defendant or the plaintiff as acting in the suit, we mean that he does so *by his solicitor*, and not literally himself. Thus when we say that the *plaintiff files his bill*, we do not mean to say that the plaintiff himself performs this manual operation, but that it is done *through the medium of his solicitor*.

The defendant now peruses the bill and constructs his defence accordingly. This defence, according to its nature, will either be what is termed a *demurrer*, a *plea*, a *disclaimer*, or an *answer*. These terms we shall now endeavour to explain.

A *demurrer* is that species of defence which a defendant avails himself of by showing some defect on the face of the bill itself, or in the matter contained in it; as in the case of a bill not being framed correctly; or in case of the facts therein stated being insufficient to found a decree upon; or in case the plaintiff, on his own showing, appears to have no right; or in case the bill seeks the discovery of a thing which would occasion a forfeiture to the defendant, or convict him of criminal misbehaviour: these all form grounds of *demurrer*; that is, grounds upon which the defendant may *demur* to, or find fault with the bill, and, instead of answering it, may appeal to the judgment of the court whether he can be compelled to answer it or not. So that a *demurrer* does not deny the truth of the plaintiff's bill, but merely objects to it on the grounds of its being, from some cause or other, *insufficient* to compel an answer.

A *plea* is that mode of defence by which a defendant endeavours to state some new fact as a reason for the cause being dismissed, delayed or barred: as a plea to the *jurisdiction*, which endeavours to show that the court has no cognizance of the cause; or to the *person*, as by showing some disability in the plaintiff, as outlawry, excommunication and the like; or by showing some matter in *bar* of the suit, and in consequence of which the plaintiff can demand no relief. So that a plea is not, like a *demurrer*, a defence arising from some defect on the face of the bill itself, but a defence arising out of new matter brought forward by the plaintiff.

A *disclaimer* is a mode of defence which a defendant resorts to when

he has no interest or concern in the subject-matter of the suit, and defends himself by *disclaiming* all right or title thereto, and prays the court to dismiss him accordingly.

An *answer*, which is the most usual defence of all those enumerated, is that by which the defendant controverts the case stated by the plaintiff, or denies some parts of it, or admits the case as stated by the plaintiff in his bill, and submits to the judgment of the court thereon.

DEMURRER.

It may be as well to observe that a defendant is not confined to any *one* of these forms of defence, for he may put in either one, two or more of them to different portions of the same bill. When the defence to the bill is by demurrer only, a draft of the demurrer is usually either drawn, or settled, and signed by counsel, after which it is transcribed on parchment and filed with the record and writ clerks. A demurrer may be put in without either the oath or the signature of the defendant, because as it advances no new fact, it requires no oath to establish it, a demurrer relying simply upon matter which is apparent on the face of the bill itself.

A period of twelve days, exclusive of the day of appearance, is allowed a defendant to put in a demurrer, being a much shorter period than is allowed for putting in an answer. The *reason* of this is, that a defendant is supposed to be able, with the advice of his counsel, to construct his demurrer immediately, as it is a mode of defence suggested by the mere perusal of the bill. A demurrer may be put in after the expiration of the twelve days, provided it is not put in to the whole bill, and a plea or answer is put in at the same time with it to such part of the bill to which the demurrer does not apply.

With reference to the time which a defendant has to put in a plea or to demur, *not demurring alone*, this is the same as that allowed a defendant to put in his answer, and we shall therefore proceed to consider the time allowed for putting in answers.

The defendant is allowed six weeks from the time of his appearance to put in his answer, either to an original bill or a supplemental bill, and four weeks to put in his answer to an amended bill. It may be as well to observe, that an *original bill* means a bill filed in the first instance by the plaintiff for the purpose of *commencing* the suit: a *supplemental bill* is a bill wherein the plaintiff sets forth any new matter

that may have arisen since the filing of the original bill and the plaintiff's reply thereto: a *bill of revivor* is a bill to *revive* or set the proceedings in motion when the suit has abated or stopped from some cause or other, as by death of any of the parties.

ANSWER.

We will now suppose the defendant to put in his answer to the plaintiff's original bill. For this purpose the defendant furnishes his counsel with instructions to enable him to prepare the answer. These instructions consist of the plaintiff's bill, together with the defendant's answers to the interrogatories contained in such bill. The defendant usually does or ought to give a separate and distinct answer to each interrogatory, which by the note at the foot of the bill he is required to answer, writing such answer opposite the interrogatory in the margin of the bill, left blank for that purpose. This being done, the bill, together with the defendant's answers given as above described, are sent to counsel in order to enable him to prepare the answer, which, when he has done and signed, is transcribed on parchment, and the defendant then signs it, and swears to the truth of its contents before one of the masters at the public office in Southampton Buildings. A memorandum of such swearing, called the *jurata*, is then made on the top of the answer, to the following effect:

Sworn at the Public Office, Southampton Buildings, in the county of Middlesex, this —— day of ——, 1846, before me ——.

When the answer is sworn, it is filed with the record and writ clerks, and notice is forthwith given to the plaintiff's solicitor.

The bill and answer being now filed, it is for the plaintiff to consider what step he next means to adopt. At this stage of the proceedings it is usual for the plaintiff to lay a copy of the bill and answer before counsel, to advise as to the sufficiency of the answer, or generally as to the best mode of proceeding in the suit. If the defendant's answer admits the allegations made by the plaintiff in his bill, then there is no necessity for a reply, for the parties being in a condition to proceed at once to a hearing, *set down the cause to be heard on bill and answer*, as it is termed; that is, all that the court would have to hear in such case would be disclosed by the plaintiff's bill and the defendant's answer; no other pleadings having been found

necessary to bring the matter before the court. In such case it is evident that nothing further is required but the adjudication of the court as to *the effect* of the matter contained in the plaintiff's bill; and it is also obvious that in such case neither party would require the testimony of witnesses, the defendant *having admitted* the truth of the facts alleged by the plaintiff, and thus dispensed with the necessity of adducing evidence in support of them.

If, however, the defendant's answer, instead of admitting the truth of the allegations in the plaintiff's bill, *traverses* or denies them, we may naturally enough suppose that the plaintiff would *reply* to the defendant's answer; and accordingly such is the case, the plaintiff joins issue by a *replication*, and proves his case, as stated in his bill, by the evidence of witnesses. In this case it is also evident, that as the defendant *denies* the allegations of the plaintiff, he must also bring witnesses in support of such denial.

REPLICATION AND REJOINDER.

We will now suppose, then, that the plaintiff *replies* to the defendant's answer. This he does by leaving the same with the record and writ clerk in whose division the cause is, and notice is given to the solicitor of the defendant. This replication was formerly a general reply to the defendant's answer, and by which he averred his bill to be true, certain and sufficient, and the defendant's answer to be directly the reverse, and which he was ready to prove as the court should award: upon which the defendant *rejoined*, averring the like on his side, and hence issue was joined upon the facts in dispute.* This brings the *pleadings* to a termination, and the next step is the *examination of witnesses* upon the facts in dispute between the parties.

INTERROGATORIES AND DEPOSITIONS.

When the parties have arrived at issue, the next step is for them to collect the best evidence they can in support of their respective cases.

For this purpose they instruct their counsel to prepare *interrogatories* for the examination of their witnesses. For it must be observed that in Chancery the witnesses of the respective parties are not examined

* The form of the replication, as recently altered, is now simply to the effect that the plaintiff joins issue with the defendant.

viva voce in open court, as at common law, but upon *written interrogatories*, framed by counsel and submitted to the witnesses out of court, and their answers or *depositions* taken in writing, after the manner of the civil law. When counsel has prepared these interrogatories, and signed them (according to practice), they are engrossed on parchment, and left to be filed with an officer of the court termed an *Examiner*, so called because it is his office to *examine* the witnesses upon the interrogatories above mentioned.

The plaintiff's solicitor then makes an appointment with the examiner for the witnesses to attend at a certain day and hour, in order to be examined.

The witnesses are accordingly apprised of this appointment, and if it is thought that any one of them may be likely not to attend, or to willingly make default, a *subpœna* should be issued out, and a copy served on him, together with a notice signed by the examiner. The following are the forms of the *subpœna* and the *notice* which would be served on the witness on such an occasion.

Subpœna ad testificandum.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To —— greeting: We command you [*if more than one* " and every of you"] that laying all other matters aside, and notwithstanding any excuse, you personally be and appear before Mr. ——, one of the examiners of witnesses in our High Court of Chancery, at his office in Rolls Yard, Chancery Lane, London, at such times as the bearer hereof shall by notice in writing appoint, [*or if a country cause*, " before —— and other commissioners appointed for the examination of witnesses in our Chancery, at such times and places as the bearer hereof shall by notice in writing appoint,"] to testify the truth according to your knowledge in a certain cause depending in our said Court of Chancery, wherein —— [*if more than one* " and another," *or* " others,"] are plaintiffs, and —— [" and another," *or* " others,"] are defendants, on the part of the —— [" plaintiff" *or* " defendant," *as the case may be*] and hereof fail not at your peril. Witness &c.

DEVON.

Notice to be signed by Examiner.

In Chancery.

Mr. —— take notice that by a writ of subpœna issuing out of and under the seal of the High Court of Chancery, to you directed and herewith served, you are hereby required to appear personally before ——, Esq., one of the Examiners of the said Court, on ——, the —— day of —— instant, by —— of the clock in the forenoon of the same day, in the Examiner's Office, in

Rolls Yard, Chancery Lane, in the county of Middlesex, to testify the truth according to your knowledge in a certain cause now depending between ——, plaintiffs, and —— defendants, on the behalf of the said ——.

To C. D. A. B. Examiner.

When a witness attends at the examiner's office, he is first of all sworn before such examiner. Before the examination of the witness commences, the party at whose instance he attends to be examined, informs the solicitor of the opposite party of the attendance of such witness, by leaving at his office a notice in writing, containing the name and description of the witness, in order that the opposite party may have an opportunity of attending before the examiner to cross-examine such witness, and also may have an opportunity of ascertaining his personal identity.

When the witness has been sworn as above explained, his examination then commences. Each interrogatory is proposed to him *seriatim*, and he is not permitted to read over or to hear read any other interrogatory until the one in hand is entirely finished. During the examination of a witness no one is permitted to be present excepting the examiner himself. When the witness has been examined to all the interrogatories, the depositions or answers which he has given are read over to him, and if he is satisfied with their correctness he signs them, which completes the examination, and his depositions are then good evidence, and may be read at the hearing of the cause. The cross-examination of a witness proceeds much in the same manner, *viz.* by the examiner submitting to him the cross-interrogatories framed for that purpose, and taking his *depositions* or answers in the same manner as on the examination in chief above described.

Deeds, letters, copies of records, and other instruments, when proved by the examination, are permitted to be read in court at the hearing of the cause; and these are in technical language called *exhibits*, because they have been exhibited to the witnesses, and must be *exhibited* in court, if the party wishes to derive any benefit from them in evidence.

What has been said here in reference to the examination of witnesses, is applicable only to such witnesses as live within twenty miles of town; when the witnesses reside beyond that distance, their examination, instead of being taken before the examiner, is taken before two commissioners appointed for that purpose, the first named of whom acts in the execution of the commission, and who proceeds to examine

the witnesses upon interrogatories in the same manner as has been already described.

PUBLICATION.

When all the witnesses have been examined before the examiners, the depositions made to the interrogatories by the witnesses are kept private in the office of such examiners until the time of *publication* as it is termed, that is, until the time arrives when they are permitted to be made public.

Publication passes, that is, they are made public, on the expiration of two months after the filing of the replication, after which the depositions are open for the inspection of all parties. Sometimes, however, publication passes by consent of the parties, and sometimes by the expiration of the time to which publication has been enlarged by order. The meaning of publication being enlarged by order is, that the time within which publication ought to pass has been extended by order of the court; and when the court thus grants an order for such extension of time, it is termed *enlarging publication*.

SETTING DOWN CAUSE FOR HEARING.

When publication has passed, the parties usually take copies of the depositions, for the purpose of being enabled to produce them in court at the hearing of the cause. We may now consider the cause as being in a proper condition to be set down for hearing, and accordingly either the plaintiff or defendant may procure the cause to be so set down for hearing. If the plaintiff sets it down, he obtains the record and writ clerk's certificate that the pleadings in the cause have been regularly filed, and takes such certificate to the senior clerk of the registrar of the court where the hearing is to take place, and by him it is entered in a book kept for that purpose. The day on which the cause is fixed for hearing is signified to the party so setting down the cause by the registrar's clerk giving him a note to that effect, which note, however, he is not at liberty to give without the record and writ clerk's certificate before alluded to; this certificate being in the nature of an authority to the registrar to set down the cause. The cause is set down for hearing either before the Lord Chancellor, the Master of the Rolls, or one of the Vice Chancellors, as may have been previously determined at the time of filing the bill.

SUBPŒNA TO HEAR JUDGMENT.

When the cause has thus been set down for hearing, and a note thereof obtained from the registrar's clerk to that effect, the next step is to sue out a *subpœna to hear judgment*, to be served on the opposite party, in order that he may attend in court on the hearing of the cause to hear the judgment of the court; for the court is unwilling to pronounce its decree in the absence of any of the parties to be affected by it, unless after having been regularly subpœnaed they neglect to appear, in which case the court, considering such absence as a sort of abandonment of the cause, will make a decree against them. On suing out the subpœna the party must make a minute of it, termed a *præcipe*, which must be left at the proper office, by way of instructions for issuing it. The form of such præcipe is as follows:—

Subpœna for —— to appear in Chancery, returnable the —— day of ——, to hear judgment on the —— day of ——, [*the day mentioned in the registrar's note*] at the suit of —— [" and another," *or* " others," *as the case may be.*]

—— [*Solicitor's name and date.*]

The subpœna itself is accordingly sued out and served on the parties whose attendance is required in Court. The following is the form of the subpœna.

Subpœna to hear Judgment.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To ——, greeting: We command you [*if more than one* " and every of you,"] that you appear before our Lord High Chancellor, [*or* " before his Honour the Master of the Rolls," *as the case may be,*] on the —— day of —— next, or whenever thereafter a certain cause now depending in our High Court of Chancery, wherein —— [" and another," *or* " others," *if more than one*] are plaintiffs, and —— [" and others," *or* " another,"] are defendants, shall come on for hearing, then and there to receive and abide by such judgment and decree as shall then or thereafter be made and pronounced, upon pain of judgment being pronounced against you by default. Witness, &c.

DEVON.

HEARING OF THE CAUSE.

The day before the cause is to come on it is put into a list among others, a copy of which is fixed up in the Registrar's Office. This list usually contains twelve causes, and is termed the *paper of causes*; it is made up from the Registrar's cause book before mentioned, the causes

being taken according to their priority as they stand in that book. Before the day of hearing arrives, *briefs* should be delivered to the counsel whom the parties intend to employ in court, accompanied, if necessary, with such observations as may be thought fit for their guidance. The *briefs* consist of a copy of the pleadings and evidence, arranged in the following order. The *title* of the cause, the prayer of the bill (the introduction and interrogatories being omitted), and the defendant's answer (the formal words and the schedules being omitted); then come the depositions of the witnesses, and the names of the different witnesses themselves written at the side of the depositions to which they respectively deposed. The use of the briefs, as the reader probably knows, is to furnish counsel with the necessary instructions respecting the cause.

We will now suppose that the day has arrived on which the hearing of the cause is to take place. Each cause is called on in the order in which it stands in the paper of causes for the day, and hence the parties are enabled to judge about the time their cause will come on. When the cause comes on it is conducted in the following manner. The case is opened by the senior counsel of the plaintiff, and then the junior counsel follows on the same side, stating the matters in issue between the parties, and the points of equity arising therefrom, and the evidence in support of the plaintiff's case; that is, the depositions of his witnesses, the admissions made by the defendant's answer (if any), and any *exhibits* that may be necessary are produced. On the plaintiff's counsel having concluded their arguments, the defendant's counsel then addresses the court, and brings forward his evidence in much the same manner as we have represented the plaintiff to have done; after which, the plaintiff's counsel is heard in reply, and this concludes the argument on both sides.

DECREE.

After the court has heard the arguments on both sides, it then proceeds to pronounce its sentence or *decree*. A decree has been defined to be the order of the court pronounced on hearing and understanding all the points in issue between the parties, and determining all the rights of the parties in the suit according to equity and good conscience. The decree being usually very long, minutes of it are taken down in court, from which it is afterwards drawn up in proper form,

in the following manner. The party in whose favour the decree was made, leaves his senior counsel's brief with the registrar, who was in court on the day of the hearing, who prepares the minutes, and delivers copies of them to such of the interested parties as require them. When the minutes have been examined by the parties, in order to ascertain their correctness, and are agreed upon, they are returned to the registrar for the purpose of having the decree drawn up. The decree itself is then drawn up, according to the judgment pronounced by the court. The next step is to *pass the decree*, as it is termed; this is done by the parties attending before the registrar, and after being satisfied with the correctness of the decree, procuring the registrar's initials to the foot of the same; after which, it is left with the entering clerk to be entered, which being done, it is then considered as *passed*, and may be forthwith acted upon.

A decree is either *final* or *interlocutory*. It very seldom happens that a decree can be final in the first instance, and conclude the cause; for if any matters of fact are strongly controverted, the court being sensible of the inadequacy of a trial by written depositions will not frequently bind the parties at once, but will direct such controverted matter to be tried in a court of law on what is termed a *feigned issue*: or a point of law may arise during the suit, which it may be necessary to have determined before the court can pronounce a final decree, in which case such point is referred to the common law judges to decide: or there may be long accounts to be settled, incumbrances and debts to be inquired into, and a variety of other facts to be cleared up, before a *final* decree can be pronounced.

For these reasons a decree is usually only *interlocutory* or qualified until the impediments are removed, when the cause is again brought on for *further directions* as it is termed, and upon the matters of equity reserved, and a *final decree* pronounced.

EXECUTION TO ENFORCE DECREES, &c.

The *decree* may be considered as the completion of the suit, and all that remains now to be said is as to the mode of enforcing such decree or carrying it into *execution*. It may be observed, however, that in many instances a compulsory process to compel a party to perform a decree is not requisite, as parties frequently, and indeed generally, obey it voluntarily. When, however, the act decreed to be done is

endeavoured to be evaded, it is then necessary to resort to some compulsory process in order to compel him to perform it.

The mode which was formerly adopted was, after the decree had been signed and enrolled, to issue a *writ of execution* against the defendant, which recited the decree and commanded the performance of it. This was under the seal of the court, and was served personally on the defendant, and if after being served therewith the defendant still refused to perform the decree, he was then in contempt, and the usual *process of contempt* issued against him. It may be asked, why was not the process of contempt issued out against the party *at once* on his disobeying the decree, instead of previously issuing this writ of execution. The reason was this. Process of contempt could only be issued against a party when he had disobeyed the commands of the court, signified to him *under the seal* of the court, and a decree not being under the seal of the court could not therefore subject a party to such process. This writ of execution of the decree could not be sued out until the decree had been signed and enrolled, and this being in most cases an unnecessary expense, and the occasion of considerable delay, was found extremely inconvenient, and hence this writ has fallen into disuse; and now, when any compulsory measures are necessary to enforce the decree, the following mode is generally pursued. The party who seeks to have the decree performed obtains a short order of the court, requiring the other party to comply with the terms of the decree within a certain period, and a copy thereof is served on the party against whom the decree is to be enforced. If the party disobeys this order he is then in contempt, and the ordinary process of contempt may then be resorted to in order to enforce the decree.

Such are the general features of a suit in equity, from its commencement to its termination; and the reader, on calling to mind the various parts of which it consists, will find that what we stated at the commencement of this outline in reference to the characteristics of suits in general is applicable to a suit in equity. We there stated that in all suits of whatever denomination the following characteristics would be observable: viz. *process* of some sort to compel the appearance of the offending party; mutual allegations between the litigating parties, or, in technical language, *pleadings;* a *mode* of determining the point in dispute, i. e. *the trial; proofs*, or in other words evidence for the contending parties to support their respective cases; *judgment*, or the conclusion of the judge, from the matter brought before him on the

trial; and, lastly, *execution*, or the compulsory means of enforcing the judgment of the court.

In the foregoing outline, we have confined ourselves to a mere outline of the ordinary proceedings, and have avoided dwelling upon any of those interlocutory matters which particular circumstances give rise to; our object being not to enter into the practical details of a suit, but simply to convey to the reader's mind a general idea of its most prominent parts.

THE END.

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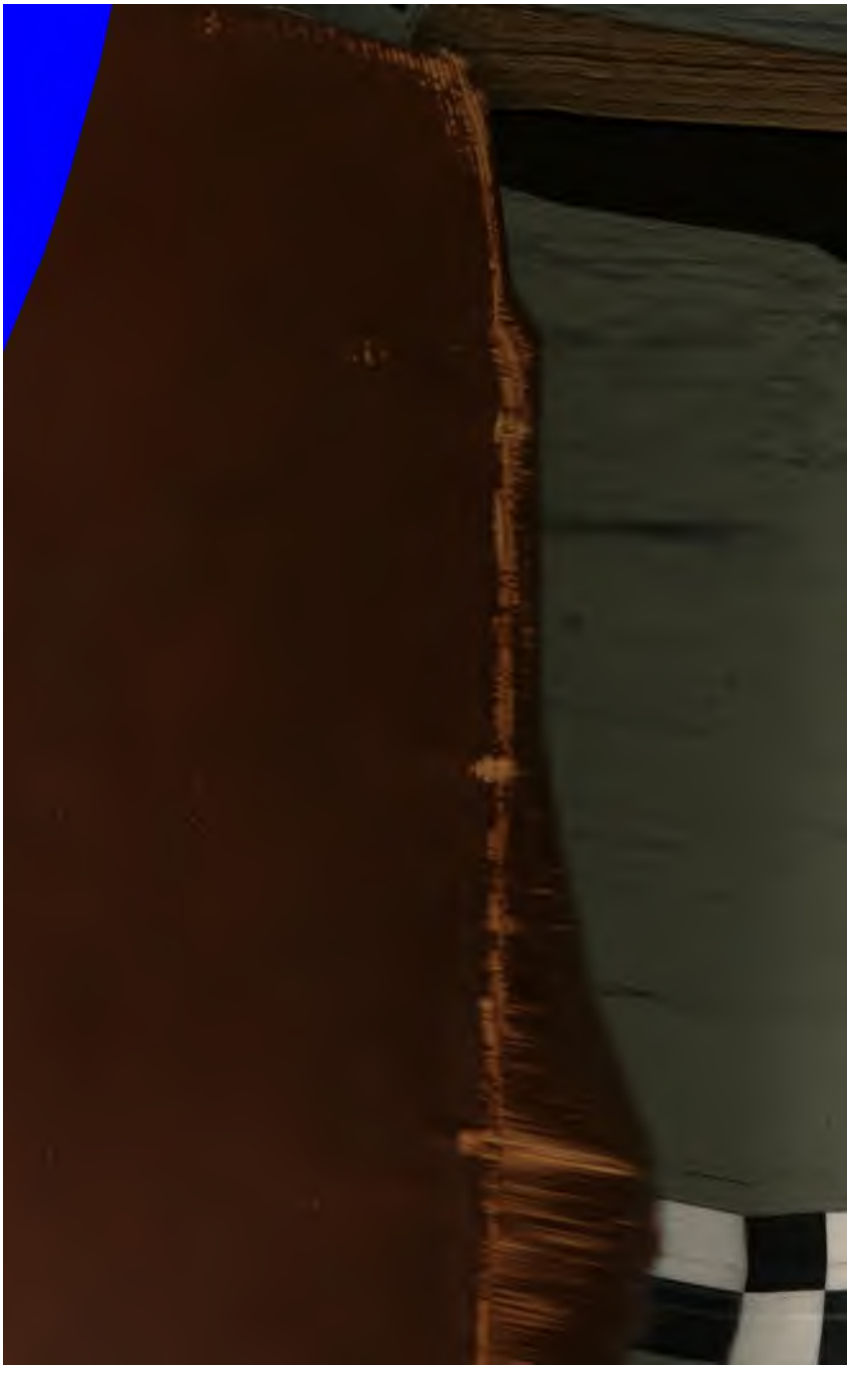
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